



## PERIODS;

- 4. FAILURE TO PROVIDE REST PERIODS;**
  - 5. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS;**
  - 6. FAILURE TO PAY ALL WAGES DUE UPON TERMINATION;**
  - 7. UNPAID BUSINESS EXPENSES;**
  - 8. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), BUS. & PROF. CODE § 17200, *et seq.***
  - 9. VIOLATION OF PRIVATE ATTORNEY GENERAL ACT (LABOR CODE §2698, *et seq.*)**

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4 Attorneys for Plaintiffs Harrison, Kaffishahsavar and Jaco  
5 on behalf of themselves and all others similarly situated

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1 Plaintiffs ANDREA HARRISON, KIARASH KAFFISHAHSavar, KIMBERLY JACO and  
 2 MIGUEL MENDOZA (“Plaintiffs”), by and through their attorneys of record, bring this Class Action  
 3 Complaint against Defendant BANK OF AMERICA, N.A., a business entity unknown (“Bank of  
 4 America” or “Defendant”). Plaintiffs hereby allege, on information and belief, except for information  
 5 based on personal knowledge, which allegations are likely to have evidentiary support after further  
 6 investigation and discovery, as follows:

7 **NATURE OF THE ACTION**

8 1. This is a class action for wage and labor violations arising out of Defendant’s failure to  
 9 pay wages for all time worked, including overtime, failure to provide timely and uninterrupted meal and  
 10 rest periods, a failure to reimburse necessary business expenses, and for derivative claims.

11 2. As more fully set forth below, Defendant failed to pay its employees minimum, regular  
 12 and overtime wages for time they worked loading programs before their shift and closing programs after  
 13 their shift, performing opening procedures, performing work during meal and rest breaks, and  
 14 participating in post-shift work performing compliance questions and audits, and closing all the  
 15 programs and shutting down the computers, failed to provide timely and uninterrupted meal and rest  
 16 periods to its California non-exempt employees in violation of California Labor Code §§ 512 and 226.7,  
 17 and the applicable Industrial Wage Order; failed to pay its employees one hour of pay at the regular rate  
 18 of compensation for each instance that Defendant failed to provide statutorily mandated rest periods and  
 19 timely off-duty meal periods; failed to reimburse the necessarily incurred business expenses such  
 20 personal cellphone usage for work purposes; failed to furnish timely and accurate wage statements;  
 21 failed to pay all wages due upon termination; and, is in violation of California’s Unfair Competition  
 22 Law (“UCL”) and California’s Private Attorneys General Act (“PAGA”).

23 3. Plaintiffs, on behalf of themselves and all other Class Members, bring this action  
 24 pursuant to Labor Code §§ 200, 201, 202, 203, 204, 210, 218, 218.6, 226, 226.3, 226.7, 256, 510, 512,  
 25 558, 1174, 1194, 1197, 1198, 1199, 2802, 2698, *et. seq.*, California Code of Regulations, Title 8, section  
 26 11050 *et seq.*, and under the California Business & Professions Code § 17200, *et. seq.*, seeking unpaid  
 27 wages, overtime, meal and rest period compensation, expense reimbursement, penalties, including under  
 28 PAGA, injunctive, and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiffs seek to represent and prosecute claims against Defendant in class action proceedings on behalf of all those similarly situated who are or were residents of the State of California.

## **JURISDICTION AND VENUE**

5. This Court has diversity jurisdiction over this action, under 28 U.S.C. § 1332. All Plaintiffs are citizens of California and Defendant is a citizen of North Carolina.

6. In addition, this Court also has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). CAFA grants federal district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which there are at least 100 members of the class, and any member of a class of plaintiffs is a citizen of a state different from any defendant, and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

7. This case meets each of the CAFA requirements because (1) Plaintiffs allege on information and belief there are thousands of class members in California, (2) there is diversity between at least one putative class member and the named Defendant; and (3) Plaintiffs allege and believe the aggregate claims for wages and penalties exceed the jurisdictional \$5,000,000.00 amount. As such, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d). This Court also has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1337.

8. Venue is proper because upon information and belief, Defendant has a regional office within the Northern District of California, and conducts substantial business—including employing class members within this District, and maintains financial centers in this District.

## **PARTIES**

9. Plaintiff ANDREA HARRISON is a resident of Colfax, California. Plaintiff was employed by Defendant at Defendant's branch in Auburn, California, from approximately 2006 to approximately June 15, 2018, as a non-exempt, hourly-paid Financial Center Client Service Representative, or Teller ("Teller").

10. Plaintiff KIARASH KAFFISHAHSavar is a resident of Sherman Oaks, California. Plaintiff was employed by Defendant at its financial centers in Los Angeles, California, from approximately 2015 to September 2018 as a non-exempt, hourly-paid Relationship Manager (Personal Banker).

11. Plaintiff KIMBERLY JACO is a resident of Los Angeles, California. Plaintiff was employed by Defendant at the Beverly Hills Main Branch from January 1, 2018 – June 1, 2018 as a non-exempt, hourly-paid Relationship Banker.

12. Plaintiff MIGUEL MENDOZA is a resident of California. Plaintiff was employed by Defendant at Bank of America's Concord and Clayton branches from September 2015 to January 2017 as a non-exempt, hourly-paid Operations Manager.

13. Plaintiffs are informed and believe, and on that basis allege that at all times material herein, Defendant was a corporation registered to do business in California, including but not limited to conducting business within the Northern District of California, with its corporate headquarters located in Charlotte, North Carolina. Defendant is in the Bank & Financial Holding industry. On information and belief, Defendant performs consumer and financial banking services, including operating financial centers. At all relevant times alleged herein, Plaintiffs are informed and believe that Defendant is authorized to and conducts business in California, including but not necessarily limited to the Northern District of California. Defendant employed Plaintiffs at several of its California financial centers and/or branches and employs/employed other Class Members throughout California, at the following positions: Operations Manager, Financial Center Client Service Representative (Teller), Relationship Manager (Personal Banker), Relationship Banker, and also positions with similar job duties and/or titles, including Senior Personal Banker, Relationship Manager and Lending Specialist, Sales and Service Specialist, and Relationship Banker – Hybrid.

## FACTS

**(a) Plaintiff Harrison and other Tellers:**

14. Between approximately 2006 and June 15, 2018, Plaintiff Harrison was employed by Defendant, as a non-exempt, hourly-paid Teller at Defendant's branch in Auburn, California. Plaintiff's duties included assisting Defendant's customers, sales of Defendant's products and services, and processing transactions like deposits and check cashing, among other duties. In order to perform her work duties and begin assisting customers at the start of her shift, Plaintiff needed to load certain programs such as Merlin and Defendant's Timekeeping program, among other programs. Starting up the computer and loading these programs took approximately 15 to 20 minutes each day before the start of

1 her shift. Plaintiff was unable to clock in until the scheduled start of her shift. When Plaintiff inquired of  
 2 her supervisors about being paid for the time spent loading the programs, she was told that Bank of  
 3 America does have control over the computer systems loading and does not pay for that time. Plaintiff  
 4 was never paid for this time - either straight-time or overtime wages. Defendant was aware of these  
 5 violations.

6       15. Plaintiff Harrison and other Tellers were not paid for this time, even though: (1) no  
 7 practical administrative difficulty of recording the additional time exists or existed for Defendant during  
 8 the relevant time period; (2) it is or was feasible for Defendant to determine or estimate the average time  
 9 it takes each employee to complete his or her pre-shift start-up sequence, as all class members at issue in  
 10 this action needed the same computer programs/applications in order to perform their work duties. *See*  
 11 *also Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

12       16. Further, at the end of her shift, Plaintiff was required to clock out. She was then required  
 13 to close all the programs and shut down the computer. This mandatory process took another 15 to 20  
 14 minutes each day and was unpaid.

15       17. Upon information and belief, the financial centers were constantly busy and short staffed.  
 16 Plaintiff was often at the teller window with a customer when her scheduled meal period started.  
 17 Plaintiff was told by supervisors to take her meal period while remaining at the teller window. Plaintiff  
 18 was told by her supervisors to input her meal period at the end of the day even though she did not  
 19 receive one. Rest breaks were often interrupted in the same manner. When Plaintiff complained to her  
 20 supervisors about working through her meal and rest breaks, she was told that it was what was needed  
 21 due to the financial center being short staffed and there was nothing that could be done.

22       18. Additionally, when Plaintiff took her meal period in the upstairs employee break room,  
 23 she was not allowed to take her full uninterrupted 30-minute meal period. Plaintiff's supervisors would  
 24 frequently come and get her because customers needed to be assisted. Plaintiff was never paid a meal  
 25 period premium for those late or interrupted meal periods.

26       19. Often, when Plaintiff's scheduled rest periods arrived, she was not allowed to take her  
 27 breaks, because the financial center was too busy and there was not enough staff to cover the teller  
 28 windows. Plaintiff was never paid a premium for those missed or interrupted rest periods.

1       20. Upon information and belief, the above-mentioned unlawful employment practices by  
 2 Defendant were applied the same to all Tellers in all financial centers in California.

3 **(b) Plaintiff Kaffishahsavar and other Relationship Managers (Personal Bankers), Senior**  
 4 **Personal Bankers, Relationship Managers and Lending Specialists, Sales and Service**  
 5 **Specialists, Relationship Bankers, and Relationship Bankers – Hybrid (collectively,**  
 6 **“Bankers”):**

7       21. Plaintiff Kiarash Kaffishahsavar was employed by Defendant at several of Bank of  
 8 America’s financial centers in Los Angeles, California from approximately 2015 to September 2018, as  
 9 a non-exempt, hourly-paid Relationship Manager (Personal Banker).

10      22. In his role as Relationship Manager (Personal Banker), Plaintiff was responsible for  
 11 exceeding monthly and quarterly sales goals through identifying the opportunities, building rapport with  
 12 new and existing clients, and securing new business and growth for the financial center. Plaintiff’s  
 13 duties also included offering clients Bank of America’s products and solutions that fit their needs;  
 14 providing clients with financial advice and assisting personal and business clients with a wide array of  
 15 financial solutions to satisfy their financial needs; identifying and routing clients to partners and  
 16 specialists who could assist them with their home loan, technical, business management, retirement, and  
 17 financial planning needs, among other duties.

18      23. In order to perform his work duties at the start of his shift, Plaintiff Kaffishahsavar  
 19 needed to load certain programs and applications every day, and also perform opening procedures,  
 20 which could take up to 30 minutes every day. The programs used to clock in were MyWorkDay (part of  
 21 Sales Force). During opening procedures Plaintiff and other Bankers were required to unlock doors and  
 22 drawers, open computers and desks and stand lookout for customers, all before clocking in. Plaintiff  
 23 Kaffishahsavar was unable to clock in until the scheduled start of his shift, which was typically 9 a.m.-6  
 24 p.m. during weekdays, and 7 a.m. – 2 p.m. on Saturdays. Plaintiff was never paid for this time - either at  
 25 straight-time or overtime wages. Defendant was aware of these violations.

26      24. Plaintiff alleges that, in addition to other penalties and expenses as alleged herein,  
 27 Defendant failed to pay overtime wages of approximately 2.5 hours for every week that Plaintiff was  
 28 working for Defendant. See attached chart outlining Plaintiff’s alleged wages that Defendant failed to

1 pay:

2 <b>Month</b>	3 <b>Hours</b>	4 <b>Wages Owed</b>
5 December 2015	6 2.5 hours /week x 4 weeks = 10 hours	7 10 hours x \$36.92= \$369.20
8 January 2016	9 2.5 hours /week x 4 weeks = 10 hours	10 10 hours x \$36.92= \$369.20
11 February 2016	12 2.5 hours /week x 4 weeks = 10 hours	13 10 hours x \$36.92= \$369.20
14 March 2016	15 2.5 hours /week x 4 weeks = 10 hours	16 10 hours x \$36.92= \$369.20
17 April 2016	18 2.5 hours /week x 4 weeks = 10 hours	19 10 hours x \$36.92= \$369.20
20 May 2016	21 2.5 hours /week x 4 weeks = 10 hours	22 10 hours x \$36.92= \$369.20
23 June 2016	24 2.5 hours /week x 4 weeks = 10 hours	25 10 hours x \$36.92= \$369.20
26 July 2016	27 2.5 hours /week x 4 weeks = 10 hours	28 10 hours x \$36.92= \$369.20
29 August 2016	30 2.5 hours /week x 4 weeks = 10 hours	31 10 hours x \$36.92= \$369.20
32 September 2016	33 2.5 hours /week x 4 weeks = 10 hours	34 10 hours x \$36.92= \$369.20
35 October 2016	36 2.5 hours /week x 4 weeks = 10 hours	37 10 hours x \$36.92= \$369.20
38 November 2016	39 2.5 hours /week x 4 weeks = 10 hours	40 10 hours x \$36.92= \$369.20
41 December 2016	42 2.5 hours /week x 4 weeks = 10 hours	43 10 hours x \$36.92= \$369.20
44 January 2017	45 2.5 hours /week x 4 weeks = 10 hours	46 10 hours x \$36.92= \$369.20
47 February 2017	48 2.5 hours /week x 4 weeks = 10 hours	49 10 hours x \$36.92= \$369.20
50 March 2017	51 2.5 hours /week x 4 weeks = 10 hours	52 10 hours x \$36.92= \$369.20
53 April 2017	54 2.5 hours /week x 4 weeks = 10 hours	55 10 hours x \$36.92= \$369.20
56 May 2017	57 2.5 hours /week x 4 weeks = 10 hours	58 10 hours x \$36.92= \$369.20
59 June 2017	60 2.5 hours /week x 4 weeks = 10 hours	61 10 hours x \$36.92= \$369.20
62 July 2017	63 2.5 hours /week x 4 weeks = 10 hours	64 10 hours x \$36.92= \$369.20
65 August 2017	66 2.5 hours /week x 4 weeks = 10 hours	67 10 hours x \$36.92= \$369.20
68 September 2017	69 2.5 hours /week x 4 weeks = 10 hours	70 10 hours x \$36.92= \$369.20
71 October 2017	72 2.5 hours /week x 4 weeks = 10 hours	73 10 hours x \$36.92= \$369.20
74 November 2017	75 2.5 hours /week x 4 weeks = 10 hours	76 10 hours x \$36.92= \$369.20
77 December 2017	78 2.5 hours /week x 4 weeks = 10 hours	79 10 hours x \$36.92= \$369.20

1	January 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
2	February 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
3	March 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
4	April 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
5	May 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
6	June 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
7	July 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
8	August 2018	2.5 hours/week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
9	September 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.92= \$369.20
10	<b>TOTAL</b>	<b>340 hours unpaid</b>	<b>\$12,552.80 wages owed + interest</b>

13       25. Further, Defendant required Plaintiff and other Bankers to keep working after the end of  
 14 their shifts, off the clock, to do compliance questions and perform audits. This after-the-shift work  
 15 occurred at least twice a week. Plaintiff's manager Garnik Chimichian would require bankers to stay  
 16 after their shifts and work off the clock to perform audit reports on missing signature cards. The  
 17 signature cards would get lost and Mr. Chimichian would blame the Bankers for losing them. Plaintiff's  
 18 manager would also require the Plaintiff and other class members to review audit questions and then be  
 19 quizzed on the audit questions after the shift had ended. Mr. Chimichian was very harsh with the  
 20 employees and forced them to stay and study the audit questions off-the-clock after the branch had  
 21 closed.

22       26. Plaintiff Kaffishahsavar and other Bankers were not paid for this off the clock time, even  
 23 though: (1) no practical administrative difficulty of recording the additional time exists or existed for  
 24 Defendant during the relevant time period; (2) it is or was feasible for Defendant to determine or  
 25 estimate the average time it takes each employee to complete his or her pre-shift start-up sequence, or  
 26 opening procedures, or post-shift work, as all class members at issue in this action needed the same  
 27 computer programs/applications in order to perform their work duties, and their duties were substantially  
 28 the same. *See also Troester, supra, 5 Cal.5th 829.*

1       27. Further, at the end of his shift, Plaintiff Kaffishahsavar was required to clock out. He was  
 2 then required to close all the programs and shut down the computer. This mandatory process took  
 3 several minutes each day and was unpaid.

4       28. Further, the nature of Plaintiff and class members' duties, and the press of business, at  
 5 times caused them to work through their meal and rest breaks, or delayed the breaks. It was common for  
 6 Bankers to receive customer calls during meal breaks both in the bank or on their personal phones.  
 7 Plaintiff Kaffishahsavar observed that clients of the Bank would call class members on their personal  
 8 phones and it was a regularly occurring event. Management encouraged that Plaintiff and other class  
 9 members always made a sale and that the customer is the most important thing. Plaintiff and other class  
 10 members were encouraged to speak with clients during meal periods and outside of their work hours.  
 11 Management knew these calls were occurring and failed to reimburse Plaintiff and the Class. Plaintiff  
 12 and other class members would often have to cut their meal periods short if the store was busy. Plaintiff  
 13 does not believe he was paid any meal or rest break premiums for non-compliant meal and rest breaks.

14       29. Upon information and belief, the above-mentioned unlawful employment practices by  
 15 Defendant was applied the same to all Relationship Managers (Personal Bankers) and related positions  
 16 in all financial centers in California, including Senior Personal Bankers, Relationship Managers and  
 17 Lending Specialists, Sales and Service Specialists, Relationship Bankers, and Relationship Bankers –  
 18 Hybrid. On information and belief, these positions share similar duties and/or functions, and any  
 19 differences mostly pertain to the level of a class member's experience. For example, on information and  
 20 belief, Defendant advertises on its website that the positions of Senior Relationship Manager can be  
 21 filled as Relationship Manager, depending only on experience and qualifications. Likewise, on  
 22 information and belief, and according to the statements Defendant makes on its own website,  
 23 Relationship Banker has an opportunity to advance into the role of a Relationship Manager. All class  
 24 positions defined in this action share responsibilities of assisting and educating customers on self-service  
 25 banking options, and introducing clients to Defendant's products and services, among other similar  
 26 duties and functions. Additionally, upon information and belief, all class positions shared similar  
 27 responsibilities and duties in performance of required opening procedures and tasks.

28       ///

1           (c) **Plaintiff Jaco and other Relationship Bankers, Relationship Bankers – Hybrid, Relationship**  
 2           **Managers (Personal Bankers), Senior Personal Bankers, Relationship Managers and Lending**  
 3           **Specialists, and Sales and Service Specialists, (collectively, “Bankers”):**

4           30. Plaintiff Kimberly Jaco was employed by Defendant at the Beverly Hills Main Branch  
 5 from January 1, 2018 – June 1, 2018 as a non-exempt, hourly-paid Relationship Banker.

6           31. In her role as Relationship Banker, Plaintiff Jaco was responsible for exceeding monthly  
 7 and quarterly sales goals through identifying the opportunities, building rapport with new and existing  
 8 clients, and securing new business and growth for the financial center. Plaintiff’s duties also included  
 9 offering clients Bank of America’s products and solutions that fit their needs; providing clients with  
 10 financial advice and assisting personal and business clients with a wide array of financial solutions to  
 11 satisfy their financial needs; identifying and routing clients to partners and specialists who could assist  
 12 them with their home loan, technical, business management, retirement, and financial planning needs,  
 13 among other duties. Relationship Bankers, such as Plaintiff, had an opportunity to advance into the role  
 14 of a Relationship Manager.

15           32. In order to perform her work duties at the start of her shift, Plaintiff needed to load  
 16 certain programs and applications every day, and also perform opening procedures, which could take up  
 17 to 30 minutes every day. The programs used to clock in were MyWorkDay (part of SalesForce), and  
 18 also Interact. During opening procedures, Plaintiff and other Bankers were required to unlock doors and  
 19 drawers, open computers and desks and stand lookout for customers, all before clocking in. Plaintiff was  
 20 unable to clock in until the scheduled start of her shift. Plaintiff’s supervisor would have her and  
 21 similarly situated class members help customers at the ATM, pitch sales in the teller lines, and talk to  
 22 customers all off the clock. She typically worked from 8:45 a.m. – 6:15 p.m. on weekdays, and at times  
 23 was scheduled on Saturdays. She worked a rotating schedule with one day off, in addition to Sunday,  
 24 each week. Plaintiff was never paid for time spent on pre- and post-shift tasks - either at straight-time or  
 25 overtime wages. Defendant was aware of these violations. Plaintiff estimates that she and similarly  
 26 situated class members spent 30 minutes per day doing off-the-clock work. This also included waiting  
 27 for them to do the opening security sweep. When Plaintiff attempted to record pre-shift work time on  
 28 one occasion, Plaintiff’s supervisor, Garnik Chimichian, did not allow Plaintiff to record it.

1       33. The table below summarizes, in addition to other penalties and expenses as alleged  
 2 herein, the unpaid wages Plaintiff Jaco is entitled to:

<b>Month</b>	<b>Hours</b>	<b>Wages Owed</b>
January 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.06 = \$360.60
February 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.06 = \$360.60
March 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.06 = \$360.60
April 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.06 = \$360.60
May 2018	2.5 hours /week x 4 weeks = 10 hours	10 hours x \$36.06 = \$360.60
<b>TOTAL</b>	<b>50 hours unpaid (during time employed at Defendant's California location)</b>	<b>\$ 1,803.00 wages owed + interest</b>

12       34. Defendant was able to review SalesForce data to confirm class members were working  
 13 off the clock. They could also use Interact to monitor what an employee was doing minute by minute.  
 14 Mr. Chimichian told the employees to do work off the clock in Salesforce, wrongly believing it would  
 15 not leave a trail of data. Assistant Managers would follow Branch Managers' instructions to deny  
 16 payment for the off the clock work, and to deny overtime pay.

17       35. Defendant's standard practice was to shorten or interrupt class members' meal breaks.  
 18 Mr. Chimichian and other managers would tell the employees to come back from their meal breaks  
 19 early. If an employee attempted to seek a premium for such a short or interrupted meal break, managers  
 20 would chastise them. Plaintiff Jaco was told on at least one occasion that it is her fault that her sales  
 21 suffer because she deliberately chooses to take a meal break at an "inopportune time." Further,  
 22 customers often call class members on their cell phones. If class members do not answer their phones  
 23 during meal breaks, another employee might get the sale. Then, class members risk not meeting their  
 24 quota, and could face discipline for poor performance, up to termination, and they also lose commission  
 25 wages.

26       36. Further, Plaintiff Jaco was required to travel to attend district meetings throughout Los  
 27 Angeles. She was not reimbursed for all such travel expenses, including ride-share fees and/or mileage  
 28 costs. Further, Plaintiff was not reimbursed for all expenses incurred when clients called her on her

1 personal cell phone.

2 **d) Plaintiff Mendoza and other Financial Center Operations Managers or Financial Center**  
 3 **Assistant Managers:**

4 37. Plaintiff Mendoza was employed by Defendant at Bank of America's Concord and  
 5 Clayton branches from September 2015 to January 2017 as a non-exempt, hourly-paid Operations  
 6 Manager.

7 38. During their employment, Plaintiff and members of the class were required to remain on  
 8 the premises for meal breaks without a written agreement for on-the-job paid meal periods. Likewise,  
 9 Plaintiff and members of the class were required to remain on the premises during their rest periods.

10 39. Defendant further instructed Plaintiff Mendoza that he was to be available during his  
 11 meal and rest periods to perform various duties and responsibilities. For example, Plaintiff's managers,  
 12 Tenisha Donaville and Amanda Velasco/Quiroz, told him that he is a manager, and that as such, he was  
 13 to take his breaks and lunch on the bank premises in order to provide assistance to other bank employees  
 14 and to complete his work duties, or words to that effect. As a result, Plaintiff's meal periods were  
 15 regularly interrupted because Defendant expected Plaintiff to perform various duties while supposedly  
 16 on off-duty meal and/or rest breaks, including, but not limited to, the following: overrides/approvals;  
 17 perform dual control; review teller transactions; provide his keys/combinations for employees to access  
 18 negotiables, safe deposit boxes, and other similar items that required keys/combinations; and respond to  
 19 customer inquiries, among other duties.

20 40. On or about December 17, 2015, Plaintiff contacted Britney Wasserman ("Ms.  
 21 Wasserman") of Defendant's Human Resources ("HR") department and notified Ms. Wasserman that  
 22 his meal periods were being interrupted. Therefore, Defendant was aware that Plaintiff was  
 23 experiencing interrupted meal periods as a result of being required to stay on the premises. Ms.  
 24 Wasserman told Plaintiff that they would get back to him regarding his inquiry about interrupted meal  
 25 periods. However, Plaintiff did not hear back from Defendants. Further, neither Defendant's HR  
 26 department nor Plaintiff's managers paid Plaintiff one additional hour of pay at his regular rate of  
 27 compensation for each workday when Defendant failed to provide him with an uninterrupted meal  
 28 period, despite Defendants' knowledge of these meal period violations.

1       41. Likewise, Plaintiff's rest periods were regularly interrupted because Defendant expected  
 2 Plaintiff to be available to the staff and to perform the same duties that he performed throughout the day,  
 3 as well as during his meal periods.

4       42. Defendant did not permit Plaintiff to complete his meal and rest periods before  
 5 performing these work duties. As set forth above, Plaintiff's managers specifically told him that  
 6 because he was a manager, if he was on a meal or rest period, he was still expected to end any break that  
 7 he might be on, and promptly address and complete any work assignments that came up during his  
 8 break, and resume his break only after he completed his work assignments, or words to that effect.

9       43. Further, Defendant failed to provide Plaintiff any other managerial or even non-exempt  
 10 relief to enable him to take duty-free meal and rest periods. Plaintiff complained to Defendant that he  
 11 was not being relieved of his work duties during his meal and rest periods because he did not have  
 12 coverage during his breaks. For example, in or around the end of December 2015 or beginning of  
 13 January 2016, and thus within his first few months of employment, when one of Plaintiff's managers  
 14 was off work for a few weeks, Plaintiff did not receive legally-compliant meal periods (in that they were  
 15 interrupted, were not at least 30-minutes in length, and/or were missed). Plaintiff contacted his district  
 16 manager, Mark (last name unknown), to ask for coverage, and explained to his district manager that he  
 17 was not receiving uninterrupted meal periods that were at least 30-minutes in length. Plaintiff's district  
 18 manager essentially dismissed Plaintiff's concerns, stating that every branch had issues with lack of  
 19 coverage, or words to that effect. Plaintiff's district manager also said that every branch is low staffed,  
 20 or words to that effect. In sum and substance, he was told in no uncertain terms that legally compliant  
 21 breaks of hourly employees such as he and others similarly situated had to take a back seat to branch  
 22 business needs. Thereafter, Plaintiff consistently did not have relief to take duty-free meal and rest  
 23 periods.

24       44. In addition, Plaintiff is informed and believes that Defendant purposely understaffed the  
 25 branches, resulting in Plaintiff and the Class not receiving compliant meal and rest periods. During  
 26 manager conference calls and morning huddles, Defendant emphasized its practice of migrating towards  
 27 digital interfaces, where customers would be encouraged to use ATMs and mobile banking as opposed  
 28 to face-to-face transactional banking. Plaintiff is informed and believes that Defendant had a pattern and

1 practice of understaffing their branches in order to encourage customers to migrate towards digital  
 2 banking features instead of performing transactions face-to-face in the branches. During the manager  
 3 conference calls, branch managers raised concerns about understaffing. However, district managers  
 4 were not receptive to such concerns, generally responding that “this is the staff that you get,” and “this is  
 5 the way Bank of America is moving,” or words to that effect. Therefore, Defendant knowingly and  
 6 intentionally failed and refused to take any steps to address complaints about understaffing and lack of  
 7 coverage. Consequentially, Plaintiff and the Class continued to not receive compliant meal and rest  
 8 periods.

9       45. In or around April or May 2016, Plaintiff was transferred from the Concord, California  
 10 branch to the Clayton, California branch, where he continued to experience non-compliant meal and rest  
 11 periods.

12       46. At both the Concord and Clayton branches, Plaintiff’s meal and rest period violations  
 13 occurred more frequently near the beginning or end of the month, or during the middle of the month.  
 14 These time periods faced a heavier flow of customers at the branch due to the processing of mortgage  
 15 payment transactions, as well as the processing of paychecks and other similar transactions. As a result  
 16 of the high volume of customers at the bank and Defendant’s continued practice of understaffing its  
 17 branches, Defendant once again made it clear to Plaintiff and the Class that he and the Class were  
 18 expected to be available to perform work during his/their meal and rest periods, as set forth above,  
 19 including, but not limited to, responding to questions by other employees regarding the processing of  
 20 transactions, reviewing and/or processing transactions, reviewing and/or processing currency transaction  
 21 reports (for transactions in an amount greater than \$10,000), and being available to provide dual support  
 22 to obtain cash for customers, among other duties.

23       47. By way of example only, and without meaning to limit the frequency of such events, in or  
 24 around the beginning and middle of June 2016, Plaintiff’s meal periods were interrupted approximately  
 25 once per shift, and his rest periods were interrupted approximately once or twice per shift as a result of a  
 26 high volume of clients at the branch. During that period, Plaintiff took his meal and rest periods in  
 27 Defendant’s break room because Defendant expected Plaintiff to be available at the branch. While in  
 28 the break room during his meal and rest periods, employees would approach Plaintiff to ask him

1 questions on processing transactions or requesting his approval on processing transactions, particularly  
 2 those involving currency transaction reports. On some occasions during that period, because the Senior  
 3 Bankers or Tellers were already assisting customers in other matters, Tellers and Bankers would also  
 4 approach Plaintiff (the Operations Manager) during his meal and rest periods to direct questions to him  
 5 about transactions and/or requested approval of transactions.

6       48. Based on the directions that Plaintiff had received from his managers, Tenisha Donaville  
 7 and Amanda Velasco/Quiroz about taking his meal and rest periods on the bank's premises and  
 8 performing work during his meal and rest periods, Plaintiff felt that he had no choice but to perform  
 9 work during his meal and rest periods during these time periods and throughout his employment.

10      49. Defendant did not pay Plaintiff one additional hour of pay at his regular rate of  
 11 compensation for each workday during the period of in or around the beginning and middle of June  
 12 2016 when Defendant failed to provide Plaintiff with uninterrupted meal and rest periods, not did it do  
 13 so at any other time period throughout his employment.

14      50. On average, Plaintiff worked shifts of approximately 8 to 9 hours. Therefore, when  
 15 Plaintiff worked during his meal periods and was not compensated for such hours worked, this  
 16 additional time triggered unpaid overtime compensation that Defendants owed Plaintiff.

17      51. In or around the beginning of June 2016, Plaintiff worked approximately 8 hours per  
 18 shift. Because Plaintiff also worked off-the-clock through his meal periods during that time period, and  
 19 did not receive pay for that time (including, the payment of minimum wages), the time that Plaintiff  
 20 worked off-the-clock caused Plaintiff's total hours worked during that period to be in excess of 8 hours  
 21 per shift. Therefore, Plaintiff worked overtime hours during that period, but was not paid minimum  
 22 wages or overtime wages for that time.

23      52. As a result of Defendant's practice of requiring Plaintiff and the putative Class to perform  
 24 work during their meal and rest periods, and of Defendant's practices and procedures of understaffing  
 25 their branches, Plaintiff and the putative Class did not receive timely meal periods, i.e., no later than the  
 26 end of the fifth hour of work. In addition, Plaintiff's and the putative Class' rest periods were delayed,  
 27 such that they did not occur in the middle of each work period, and were regularly interrupted.

28      53. As set forth above, Plaintiff's and members of the Class's missed, late, shortened, "on

1 duty,” and on-the-premises meal and rest breaks were caused by pressure from supervisors and Bank of  
 2 America’s required business practices, and were not voluntary.

3       54. Whenever Plaintiff’s and members of the Class’s meal or rest breaks are/were late,  
 4 missed, or shortened because of business concerns and thus not voluntary on the part of the employee,  
 5 Bank of America is required by statute and Wage Order No. 4 to pay the affected employee one  
 6 additional hour of pay at his or her regular rate of compensation for each workday that the meal or rest  
 7 period was not provided, up to a total of two hours pay – one for any number of missed meal periods and  
 8 one for any number of missed rest periods.

9       55. Whenever Plaintiff and class members’ meal or rest breaks are “on duty” or required to  
 10 be on-the-premises, their breaks are on-the-clock and they must be paid for the time spent working by  
 11 the Class Members during these non-compliant breaks, in addition to being paid the required one  
 12 additional hour of pay at his or her regular rate of compensation for each workday that the meal or rest  
 13 period was not provided, up to a total of two hours pay – one for any number of missed meal periods and  
 14 one for any number of missed rest periods, as required by the Wage Order and the Labor Code.

15       56. Plaintiff and class members’ right to one additional hour of pay at their regular rate of  
 16 compensation for each workday that the meal or rest period was not provided, up to a total of two hours  
 17 pay – one for any number of missed meal periods and one for any number of missed rest periods, vested  
 18 immediately upon the late, missed, taken “on duty” or on-the-premises, or short meal or rest breaks.

19       57. During the class period, Bank of America: (1) failed to track and identify which  
 20 employee meal periods were late, missed, or short; (2) failed to maintain records of whether the missed,  
 21 late, or short meal period was due to the press of business or voluntary; (3) failed to pay employees’ “on  
 22 duty” or on-the-premises meal or rest breaks; and (4) failed to pay one additional hour of pay at the  
 23 employees’ regular rate of compensation for each workday that a meal or rest period was not provided,  
 24 up to a total of two hours pay – one for any number of missed meal periods and one for any number of  
 25 missed rest periods.

26       58. Bank of America’s wholesale failure to comply—or even have a system for complying—  
 27 with California’s meal and rest break laws provided it with a competitive advantage over companies that  
 28 complied with California law.

1       59. Additionally, Bank of America could have easily implemented a system for automatically  
2 paying one additional hour of pay at the employees' regular rate of compensation for each workday that  
3 a meal or rest period was not provided, up to a total of two hours pay – one for any number of missed  
4 meal periods and one for any number of missed rest periods, but chose not to do so. For example, Bank  
5 of America could have simply paid operations managers one additional hour of pay at the employees'  
6 regular rate of compensation for each workday that their meal breaks were "on duty" or on-premises,  
7 and simply paid the meal breaks as time worked. Further, Bank of America could instruct operations  
8 managers to notify their supervisors when they received interrupted, short, or late meal or rest breaks.  
9 Moreover, on information and belief, software exists where Bank of America can track when breaks are  
10 improper, record the reasons therefor, and pay compensation of one additional hour of pay at the  
11 employee's regular rate of compensation for each workday that the meal or rest period is not provided,  
12 up to a total of two hours pay – one for any number of missed meal periods and one for any number of  
13 missed rest periods, to affected employees. These systems also record that additional compensation on  
14 wage statements.

15       60. Because Bank of America failed to implement a system for tracking meal and rest break  
16 violations and recording whether they were voluntary, a presumption arises that the break violations  
17 were involuntary and Bank of America owes employees one additional hour of pay at the employees'  
18 regular rate of compensation therefor, up to a total of two hours pay – one for any number of missed  
19 meal periods and one for any number of missed rest periods. *Safeway, Inc. v. Superior Court of Los*  
20 *Angeles County*, 238 Cal.App.4th 1138, 1159-1160 (2015).

21       61. Moreover, because Bank of America required Plaintiff and the Class to perform work  
22 during their meal periods while Plaintiff and the Class were clocked out, Plaintiff and the Class worked  
23 time for which they were not compensated, including minimum wages and/or overtime wages.

24       62. Further, Defendant required Plaintiff and members of the Class to use their personal  
25 cellular phones both during and outside of their work shifts in order to communicate with other Bank of  
26 America employees regarding status updates, emergencies, scheduling, pending documentation, pending  
27 training, approving timesheets for employees, or answering questions that Plaintiff's managers and/or  
28 other employees had and/or any other work-related purposes.

1       63. By way of example only, and without meaning to limit the frequency of such events, in or  
 2 around end of 2015 or beginning of 2016, Plaintiff's managers were trying to contact Plaintiff on his  
 3 personal cellular phone because employees needed access to his keys and to his code in order to access  
 4 the bank vault. When Plaintiff was unable to respond immediately, Plaintiff's manager became upset at  
 5 Plaintiff, questioning him with regards to his whereabouts and why he was unable to answer their  
 6 attempts to reach him on his cellular phone. As a result, Plaintiff was caused to reasonably believe that  
 7 he had no choice but to keep his personal cellular phone on his person during all of his work hours and  
 8 to respond to text messages and phone calls received from other Bank of America employees.

9       64. On one occasion, on or about November 27, 2015, Plaintiff notified his manager that he  
 10 was not feeling well and would be taking a sick day. Not only did Plaintiff's manager express her  
 11 discontentment at Plaintiff taking a sick day, but Plaintiff's manager continued text messaging Plaintiff  
 12 about work. For example, Plaintiff's manager told Plaintiff that the branch was "understaffed," or words  
 13 to that effect. Plaintiff's manager also said that "you will have to be here for the meeting. No  
 14 exceptions," or words to that effect. Plaintiff's manager also texted Plaintiff that day, inquiring about  
 15 the location of a cash box, even though Plaintiff told his manager that he was not feeling well and was  
 16 taking a sick day off from work. Plaintiff shared screen shots of these text messages with Bank of  
 17 America's HR department.

18       65. Bank of America had knowledge of Plaintiff and other Class Members being required to  
 19 use their personal cellular phones during and outside of their work shifts, but nonetheless Bank of  
 20 America failed to reimburse Plaintiff and members of the Class for those expenses.

21       66. Defendant's conduct, as alleged here, has caused Plaintiffs and class members damages  
 22 including, but not limited to, loss of wages and compensation. Defendant is liable to Plaintiffs and the  
 23 class for failing to pay all straight-time and overtime wages owed for each pay period, failing to pay  
 24 meal and rest break premiums, failing to provide timely and accurate wage statements, failing to pay all  
 25 wages due upon termination, failing to reimburse for unpaid business expenses, unfair competition and  
 26 for penalties under PAGA.

#### **EXHAUSTION OF PAGA NOTICE REQUIREMENT**

27       67. Plaintiff Harrison exhausted the notice requirement by filing a complaint with the Labor  
 28

1 and Workforce Development Agency (“LWDA”) in her letter dated October 17, 2018, as required under  
2 the California Labor Code Private Attorney General Act (“PAGA”). A true and correct copy of  
3 Plaintiff’s letter is attached hereto as **Exhibit A**. The LWDA did not assume jurisdiction over the  
4 applicable penalty claims alleged; therefore, Plaintiff has exhausted the procedural requirement under  
5 PAGA to pursue any and all penalty claims as provided under PAGA.

6       68. Plaintiff Mendoza exhausted the notice requirement by submitting a letter to the LWDA,  
7 along with a copy of the proposed complaint, dated March 22, 2019. A true and correct copy of Plaintiff  
8 Mendoza's LWDA letter, and attachment to the letter, is attached hereto as **Exhibit B**. The LWDA did  
9 not assume jurisdiction over the applicable penalty claims alleged.

## **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

11       69. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly  
12 situated, and as members of the Class they seek to represent. The Class consists of Defendant's current  
13 and former non-exempt employees that fall within at least one of the following subclasses:

- a. Employees working or who worked in the State of California for Defendant as a Teller on or after October 26, 2014, through the date of preliminary approval of the settlement by the Court;
  - b. Employees working or who worked in the State of California for Defendant as a Financial Center Operations Manager or a Financial Center Assistant Manager on or after March 25, 2015, through the date of preliminary approval of the settlement by the Court;
  - c. Employees working or who worked in the State of California for Defendant as a Personal Banker, Senior Personal Banker, Relationship Manager, Relationship Manager and Lending Specialist, Sales and Service Specialist, Relationship Banker, or a Relationship Banker – Hybrid on or after March 27, 2016, through the date of preliminary approval of the settlement by the Court.

26       70. The Class expressly exclude therefrom any individuals who, as of the date of final  
27 approval of the Class Settlement, have filed a pending, separate lawsuit, individually and/or as a putative  
28 class or representative action, asserting the same claims to those alleged in the Lawsuits, including but

1 not limited to the certified claims in *Frausto v. Bank of America, N.A.*, Case No. 3:18-cv-01983-LB and  
 2 *Suarez v. Bank of America, N.A.*, Case No. 3:18-cv-01202-LB, as set forth in Dkt. #128 of Case No.  
 3 3:18-cv-01983-LB. The Class also excludes any former employee of Defendant who has previously  
 4 released such claims. With respect to any current employee who has previously released such claims,  
 5 any time period covered by each such employee's release agreement shall be excluded from the  
 6 calculation of any settlement sum payable under this Agreement.

7       71.     **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous  
 8 that individual joinder is impracticable. The members of the class are so numerous that joinder of all  
 9 members would be unfeasible and impracticable. Plaintiffs estimate, on information and belief, that  
 10 there are thousands current and former non-exempt employees of Defendant in California during the  
 11 class period meet the class definition as alleged in this Complaint. The identity of individuals qualifying  
 12 for class membership is readily ascertainable via inspection of the personnel records and other  
 13 documents maintained by Defendant in the normal course of business. Class members may be notified  
 14 of the pendency of this action by mail, electronic mail, the internet, or published notice.

15       72.     **Commonality and Predominance:** Common questions of law and fact exist as to all  
 16 members of the Class. These questions predominate over any questions affecting only individual class  
 17 members such that a class action is superior to other forms of action. The claims of the named Plaintiffs  
 18 are typical of those of every other member of the Class. All class members were treated in a similar  
 19 fashion and suffered similar harm as a consequence of Defendant's conduct, as alleged. Common legal  
 20 and factual questions include, but are not limited to:

- 21           a. Whether Defendant's policy and/or practice forced Plaintiffs and the class to work off the  
                 clock;
- 22           b. Whether Defendant's failed to pay Plaintiffs and the Class for pre-shift and post-shift work;
- 23           c. Whether Defendant violated Labor Code in failing to pay Plaintiffs and the Class  
                 minimum/regular and overtime wages for all hours worked;
- 24           d. Whether Defendant had a policy or practice of not paying meal or rest period premium  
                 wages;
- 25           e. Whether Defendant violated Labor Code § 226.7 and/or § 512 and engaged in a pattern or

- 1 practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiffs  
2 and members of the class
- 3 f. Whether Defendant engaged in a pattern or practice of impeding Plaintiffs and the members  
4 of the class from taking statutory off-duty thirty (30) minute meal periods on a timely basis;
- 5 g. Whether Defendant required Plaintiffs and the members of the class to remain on site during  
6 meal and rest periods.
- 7 h. Whether Defendant engaged in a pattern or practice of failing to properly compensate  
8 Plaintiffs and the members of the class for missed, untimely or on-duty meal periods and rest  
9 periods as required by California law;
- 10 i. Whether Defendant violated the applicable California Industrial Welfare Commission  
11 (“IWC”) Order by failing to provide Plaintiffs and the members of the class with timely off–  
12 duty thirty (30) minute meal periods;
- 13 j. Whether Defendant engaged in unfair practices and violated California Business and  
14 Professions Code § 17200 by failing to provide Plaintiffs and the members of the class with  
15 their statutory off-duty meal and rest periods on a timely basis;
- 16 k. Whether Defendant engaged in unfair practices and violated California Business and  
17 Professions Code § 17200 by failing to pay Plaintiffs and the members of the class for all  
18 time worked;
- 19 l. Whether Defendant maintained accurate time records of off-duty thirty (30) minute meal  
20 breaks taken by Plaintiffs and members of the class in accordance with the applicable IWC  
21 Wage Order;
- 22 m. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage  
23 statements to Plaintiffs and members of the class that failed to include payments for missed,  
24 untimely, and/or on-duty meal periods among wages earned throughout the Class period;
- 25 n. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage  
26 statements to Plaintiffs and members of the class that failed to include payment for all hours  
27 worked;
- 28 o. Whether Defendant violated Labor Code § 226(a) by issuing inaccurate itemized wage

- 1 statements to Plaintiffs and members of the class that failed to accurately state the total hours  
 2 worked, to the detriment of Plaintiffs and the class;
- 3 p. Whether Defendant failed to compensate, and therefore violated Labor Code § 226.7 and the  
 4 applicable Wage Order by failing to provide ten (10) minute, uninterrupted rest periods as  
 5 contemplated by California law for work periods in excess of three and one-half (3 ½) hours;  
 6 q. Whether Defendant engaged in a pattern or practice of failing to properly compensate  
 7 Plaintiffs and the members of the class for failing to provide ten (10) minute, uninterrupted  
 8 rest periods as contemplated by California law for work periods in excess of three and one-  
 9 half (3 ½) hours;  
 10 r. Whether Defendant violated Labor Code § 1197 due to failure to compensate Plaintiffs and  
 11 members of the class for those acts Defendant required Plaintiffs and members of the class to  
 12 perform for the benefit of Defendant;  
 13 s. Whether Defendant violated Labor Code § 2802 due to failure to reimburse Plaintiffs and  
 14 members of the class for those expenses Defendant required Plaintiffs and members of the  
 15 class to perform for the benefit of Defendant;  
 16 t. Whether Defendant violated Labor Code § 201-203 by failing to pay all wages due upon  
 17 termination to all Class members who were terminated or voluntarily quit; and  
 18 u. The nature and extent of class-wide injury and the measure of damages or restitution for the  
 19 injury.

20       73. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the class they  
 21 seek to represent because Plaintiffs were exposed and subjected to the same unlawful business practices  
 22 and conduct as other employees in the Class employed by Defendant during the class period. Named  
 23 Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the  
 24 members of the class and are based on the same legal theories. Plaintiffs and the members of the class  
 25 they seek to represent sustained the same types of damages and losses.

26       74. **Adequacy:** Plaintiffs are adequate representatives of the class(es) they seek to represent  
 27 because their interests do not conflict with the interests of the members of the class Plaintiffs seek to  
 28 represent. There is a well-defined community of interest in the questions of law and fact affecting the

1 class of persons that Plaintiffs represent as a whole. Plaintiffs retained counsel competent and  
 2 experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously.  
 3 Neither Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Class. The  
 4 interests of the members of the class will be fairly and adequately protected by Plaintiffs and their  
 5 counsel.

6       75. Named Plaintiffs do not anticipate any difficulty managing this litigation.

7       76. **Superiority and Substantial Benefit:** The class action is superior to other available  
 8 means for the fair and efficient adjudication of Plaintiffs and the class members' claims. Individual  
 9 employees such as Plaintiffs have a difficult time prosecuting individual actions against large corporate  
 10 employers such as Defendant. The damages suffered by each individual class member may be limited.  
 11 Damages of such magnitude are small given the burden and expense of individual prosecution of the  
 12 complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually  
 13 impossible for the class members to redress the wrongs done to them on an individual basis. Even if  
 14 members of the Class themselves could afford such individual litigation, the court system could not.  
 15 Individualized litigation increases the delay and expense to all parties and the court system due to the  
 16 complex legal and factual issues of the case. By contrast, the class action device presents far fewer  
 17 management difficulties and provides the benefits of single adjudication, economy of scale, and  
 18 comprehensive supervision by a single court.

19       77. The Class should also be certified because:

- 20           a. The prosecution of separate actions by individual members of the Class would create  
                 a risk of inconsistent or varying adjudications with respect to individual Class  
                 members which would establish incompatible standards of conduct for Defendant;
- 21           b. The prosecution of separate actions by individual members of the Class would create  
                 a risk of adjudication with respect to them, which would, as a practical matter, be  
                 dispositive of the interests of the other Class members not parties to the adjudications,  
                 or substantially impair or impede their ability to protect their interests; and
- 22           c. Defendant acted or refused to act on grounds generally applicable to the Class, and/or  
                 the general public, thereby making appropriate final and injunctive relief with respect

to the Class as a whole.

**FIRST CAUSE OF ACTION**  
**FAILURE TO PAY REGULAR AND MINIMUM WAGES**  
**(Violation of Labor Code §§1197, 1198, and IWC Wage Order No. 4-2001)**  
**(Against all Defendants)**

78. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

79. Labor Code § 1197 provides, “the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

80. Labor Code §1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

81. IWC Wage Order 4-2001 Section 4 provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

82. Pursuant to the IWC Wage Order, Defendant is required to pay Plaintiffs, and the members of the Class, for all hours worked, meaning the time which an employee is subject to the control of the employer.

83. At all relevant times during the class period, Defendant failed to pay Plaintiffs and other members of the class wages for all hours worked. Plaintiffs Harrison, Kaffishahsavar, and Jaco, and the class of Tellers, Personal Bankers, Senior Personal Bankers, Relationship Managers, Relationship Manager and Lending Specialists, Sales and Service Specialists, Relationship Bankers, or Relationship Bankers – Hybrid were required to boot up their computers and load several programs to begin their shifts, and also perform opening procedures, and they were not paid for this time. Similarly, after their shift ended, Plaintiffs Harrison, Kaffishahsavar, and Jaco, and the Class of Tellers, Personal Bankers, Senior Personal Bankers, Relationship Managers, Relationship Manager and Lending Specialists, Sales and Service Specialists, Relationship Bankers, or Relationship Bankers – Hybrid had to clock out from the time program, log off of all the programs, and shut down the computer. Further, Plaintiffs Kaffishahsavar, and Jaco, and the Class of Personal Bankers, Senior Personal Bankers, Relationship

1 Managers, Relationship Manager and Lending Specialists, Sales and Service Specialists, Relationship  
 2 Bankers, or Relationship Bankers – Hybrid were required to work after the end of their shifts in  
 3 performing compliance questions and audits. Plaintiffs and the Class were not paid for this time.

4       84. In addition, Plaintiffs Harrison, Mendoza, Kaffishahsavar, and Jaco and the Class of  
 5 Tellers, Financial Center Operations Managers, Financial Center Assistant Managers, Personal Bankers,  
 6 Senior Personal Bankers, Relationship Managers, Relationship Manager and Lending Specialists, Sales  
 7 and Service Specialists, Relationship Bankers, or Relationship Bankers – Hybrid were required to  
 8 perform work during their meal periods, were not relieved of their work duties during their meal  
 9 periods, and as a result, performed work off-the-clock during their meal periods. Plaintiffs and the Class  
 10 were required to be on the premises during their meal and rest periods, such that their meal and rest  
 11 periods were “on duty.” Plaintiffs and the Class were not paid for the time spent working during their  
 12 non-compliant meal periods, including compensation for minimum wages.

13       85. In relevant part, Labor Code § 1194 provides that any employee receiving less than  
 14 minimum wage applicable to the employee is entitled to recover in a civil action the unpaid balance of  
 15 the amount of this minimum wage, including interest thereon, reasonable attorney’s fees, and cost of  
 16 suit, which Plaintiffs and other members of the class seek.

17       86. Pursuant to Labor Code § 1194.2, liquidated damages are available to employees who  
 18 file an action under Labor Code § 1194, which Plaintiffs and members of the class seek.

19       87. In committing the violations of state law as herein alleged, Defendant has knowingly and  
 20 willfully refused to perform their obligations to compensate Plaintiffs and members of the class for all  
 21 wages earned and all hours worked at least minimum wage. As a direct result, Plaintiffs and other  
 22 members of the class have suffered and continue to suffer, substantial losses related to the use and  
 23 enjoyment of such compensation, wages and lost interest on such monies and expenses and attorney’s  
 24 fees in seeking to compel Defendant to fully perform their obligation under state law, all to their  
 25 respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

26       88. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount of the  
 27 unpaid wages resulting from Defendant’s minimum wage violations including interest thereon,  
 28 reasonable attorney’s fees and costs of suit, and liquidated damages to the fullest extent permissible

pursuant to Labor Code §§ 1194 and 1194.2.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME WAGES**  
**(Violation of Labor Code §510, and IWC Wage Order No. 4-2001)**  
**(Against all Defendants)**

89. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

6       90. Labor Code §510 and the applicable Wage Order provide that employees in California  
7 shall not be employed more than eight hours in any workday or forty hours in a workweek unless they  
8 receive additional compensation beyond their regular wages in amounts specified by law. Specifically,  
9 Labor Code §510(a) requires that: Any work in excess of eight hours in one workday and any work in  
10 excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in  
11 any one workweek shall be compensated at the rate of no less than one and one-half times the regular  
12 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the  
13 rate of no less than twice the regular rate of pay for an employee.

14        91. Labor Code § 1194 establishes an employee's right to recover unpaid overtime  
15 compensation, and interest thereon, together with the costs of suit, and attorneys' fees. Labor Code  
16 §1198 makes employment of an employee for longer hours than the IWC set or under conditions the  
17 IWC prohibits is unlawful.

18        92. At all times relevant hereto, Plaintiffs and other members of the class, have worked more  
19 than eight hours in a workday, and/or more than forty hours in a workweek.

20        93. At all times relevant hereto, Defendant has failed to pay Plaintiffs, and the other members  
21 of the class, the overtime compensation premium for those unpaid hours they have worked in excess of  
22 the maximum hours permissible by law as required by Labor Code § 510 and 1198, and the applicable  
23 Wage Order.

24       94. At all relevant times during the class period, Defendant failed to pay Plaintiffs and other  
25 members of the class wages for all overtime hours worked. Plaintiffs Harrison, Kaffishahsavar, and  
26 Jaco, and the class of Tellers, Personal Bankers, Senior Personal Bankers, Relationship Managers,  
27 Relationship Manager and Lending Specialists, Sales and Service Specialists, Relationship Bankers, or  
28 Relationship Bankers – Hybrid were required to boot up their computers and load several programs to

1 begin their shifts, and also perform opening procedures, and they were not paid for this time. Similarly,  
 2 after their shift ended, Plaintiffs Harrison, Kaffishahsavar, and Jaco, and the Class of Tellers, Personal  
 3 Bankers, Senior Personal Bankers, Relationship Managers, Relationship Manager and Lending  
 4 Specialists, Sales and Service Specialists, Relationship Bankers, or Relationship Bankers – Hybrid had  
 5 to clock out from the time program, log off of all the programs, and shut down the computer. Further,  
 6 Plaintiffs Kaffishahsavar, and Jaco, and the Class of Personal Bankers, Senior Personal Bankers,  
 7 Relationship Managers, Relationship Manager and Lending Specialists, Sales and Service Specialists,  
 8 Relationship Bankers, or Relationship Bankers – Hybrid were required to work after the end of their  
 9 shifts in performing compliance questions and audits. Plaintiffs and the Class were not paid for this  
 10 time.

11       95. In addition, Plaintiffs Harrison, Mendoza, Kaffishahsavar, and Jaco, and the Class of  
 12 Tellers, Financial Center Operations Managers, Financial Center Assistant Managers, Personal Bankers,  
 13 Senior Personal Bankers, Relationship Managers, Relationship Manager and Lending Specialists, Sales  
 14 and Service Specialists, Relationship Bankers, or Relationship Bankers – Hybrid were required to  
 15 perform work during their meal periods, were not relieved of their work duties during their meal  
 16 periods, and as a result, performed work off-the-clock during their meal periods. Plaintiffs and the Class  
 17 were required to be on the premises during their meal and rest periods, such that their meal and rest  
 18 periods were “on duty.” Plaintiffs and the Class were not paid for the time spent working during their  
 19 non-compliant meal periods, including compensation for overtime wages.

20       96. By virtue of Defendant’s unlawful failure to pay the lawful overtime rate of  
 21 compensation to the Plaintiffs, and the other members of the class, Plaintiffs and the other members of  
 22 the class, have suffered, and will continue to suffer, damages in amounts which are presently unknown  
 23 to them, but which exceed the jurisdictional limits of this Court and will be ascertained according to  
 24 proof at trial.

25       97. Defendant acted and is acting intentionally and oppressively toward Plaintiffs, and the  
 26 other members of the class, with a conscious disregard of their rights, or the consequences to them, with  
 27 the intent of depriving them of property and legal rights and otherwise causing them injury. Defendant  
 28 failed to pay Plaintiffs and other members of the class for all hours worked including the time spent

1 loading programs before their shift, performing opening procedures, closing the programs after their  
2 shifts, post-shift compliance and audit work, and the work performed during meal breaks. To the extent  
3 this time worked exceeded eight (8) hours in a day and/or forty (40) hours in a week, Plaintiffs and class  
4 members are entitled to overtime wages.

5       98. Plaintiffs and the class, request recovery of overtime compensation according to proof,  
6 interest, attorneys' fees, expenses, and costs pursuant to Labor Code § 1194(a), and Civil Code  
7 §§3287(b) and 3289, as well as the assessment of any statutory penalties against Defendant, in a sum as  
8 provided by the Labor Code, the applicable Wage Orders, and/or other statutes.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(Violation of Labor Code §§ 512, 226.7, and IWC Wage Order No. 4-2001)**  
**(Against all Defendants)**

99. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

13       100. California Labor Code § 226.7(b) provides, “An employer shall not require an employee  
14 to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare  
15 Commission”.

16        101. IWC Order No. 4-2001(11)(A) provides, in pertinent part: “[n]o employer shall employ  
17 any person for a work period of more than five (5) hours without a meal period of not less than 30  
18 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the  
19 meal period may be waived by mutual consent of the employer and the employee.”

20        102. § 512(a) of the California Labor Code provides, in pertinent part: “[a]n employer may not  
21 employ an employee for a work period of more than five hours per day without providing the employee  
22 with a meal period of not less than 30 minutes, except that if the total work period per day of the  
23 employee is no more than six hours, the meal period may be waived by mutual consent of both the  
24 employer and employee. An employer may not employ an employee for a work period of more than 10  
25 hours per day without providing the employee with a second meal period of not less than 30 minutes,  
26 except that if the total hours worked is no more than 12 hours, the second meal period may be waived by  
27 mutual consent of the employer and the employee only if the first meal period was not waived.”

28        103. "An employer's duty with respect to meal breaks under both section 512, subdivision (a)

1 and [the] Wage Order...is an obligation to provide a meal period to its employees. The employer  
2 satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities  
3 and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not  
4 impede or discourage them from doing so." *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004,  
5 1040 (2012).

6       104. As alleged herein, Defendant failed to authorize and permit timely and uninterrupted  
7 meal periods during the class period. Plaintiffs and members of the class were routinely required to work  
8 without a timely and uninterrupted meal break at the direction of Defendant and/or with Defendant's  
9 knowledge and acquiescence.

10        105. By its actions in requiring its employees to work through meal periods and/or its failure  
11 to relieve the employees of their duties for their off-duty meal periods, Defendant has violated  
12 California Labor Code §§ 226.7, 512 and § 11 of IWC Wage Order No. 4-2001, and is liable to  
13 Plaintiffs and the class.

14        106. As a result of the unlawful acts of Defendant, Plaintiffs and the class have been deprived  
15 of timely off-duty meal periods and are entitled to recovery under Labor Code §§ 226.7(c), 512 and § 11  
16 of IWC Wage Order No. 4-2001, in the amount of one additional hour of pay at the employee's regular  
17 rate of compensation for each workday in which Defendant failed to provide its employees with timely  
18 statutory off-duty meal periods.

19       107. Plaintiffs, and the other members of the class, are entitled to seek and recover reasonable  
20 attorneys' fees and costs pursuant to Labor Code §§ 226.7 and 512.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**  
**(Violation of Labor Code §§ 226.7 and IWC Wage Order No. 4-2001)**  
**(Against all Defendants)**

24 108. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

25        109. California Labor Code § 226.7(b) provides, “An employer shall not require an employee  
26 to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare  
27 Commission”.

<sup>28</sup> 110. IWC Order No. 4-2001(12)(A) provides, in pertinent part: “[e]very employer shall

1 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the  
 2 middle of each work period. The authorized rest period time shall be based on the total hours worked  
 3 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a  
 4 rest period need not be authorized for employees whose total daily work time is less than three and one–  
 5 half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be  
 6 no deduction from wages”.

7       111. IWC Order No. 4-2001(12)(B) further provides: “[i]f an employer fails to provide an  
 8 employee with a rest period in accordance with the applicable provisions of this order, the employer  
 9 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each  
 10 workday that the rest period is not provided”.

11       112. As alleged herein, Defendant failed to authorize and permit rest breaks during the Class  
 12 period. Plaintiffs and members of the class were required to work through rest periods at the direction of  
 13 Defendant and/or with Defendant’s knowledge and acquiescence.

14       113. By its actions in requiring its employees during the class period to work through rest  
 15 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant  
 16 violated § 12 of IWC Wage Order No. 4-2001 and California Labor Code § 226.7 and is liable to  
 17 Plaintiff and the class.

18       114. Defendant’s unlawful conduct alleged herein occurred in the course of employment of  
 19 Plaintiffs and all others similarly situated and such conduct has continued through the filing of this  
 20 complaint.

21       115. As a direct and proximate result of Defendant’s unlawful action, Plaintiffs and the class  
 22 have been deprived of timely rest periods and/or were not paid for rest periods taken during the Class  
 23 period and are entitled to recovery under Labor Code § 226.7(c) in the amount of one additional hour of  
 24 pay at the employee’s regular rate of compensation for each workday in which Defendant failed to  
 25 provide employees with timely and/or paid rest periods.

26       116. Plaintiffs, and the other members of the class, are entitled to seek and recover reasonable  
 27 attorneys’ fees and costs pursuant to Labor Code §§ 226.7.

28       ///

**FIFTH CAUSE OF ACTION**  
**FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**  
**(Violation of Labor Code § 226)**  
**(Against all Defendants)**

117. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

118. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, [...], (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”.

119. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period.

120. Plaintiffs are informed, believe and thereon allege that at all times relevant, Defendant knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to furnish Plaintiffs and each class member with timely and accurate itemized statements showing all applicable hourly rates in effect and corresponding number of hours, and gross regular and overtime wages earned by Plaintiffs and each class member, as required by Labor Code § 226(a), and that the premiums owed to Plaintiffs and the members of the Class for noncompliant meal and rest periods were not included in gross wages earned by Plaintiffs and the Class.

121. Defendant’s failure to provide Plaintiffs and members of the Class with accurate itemized wage statements during the Class period has caused Plaintiff and members of the Class to incur

economic damages in that they were not aware that they were owed and not paid compensation for all hours worked, including overtime, and for noncompliant rest periods and meal periods. In addition, Defendant provided inaccurate information regarding hours worked, which masked its underpayment of wages to Plaintiffs and the Class.

122. As a result of Defendant's issuance of inaccurate itemized wage statements to Plaintiffs and members of the Class in violation of Labor Code § 226(a), Plaintiffs and the members of the Class are each entitled to recover penalties pursuant to § 226(e) of the Labor Code.

## **SIXTH CAUSE OF ACTION**

**FAILURE TO PAY ALL WAGES DUE UPON TERMINATION  
(Violation of Labor Code §§ 201-203)  
(Against all Defendants)**

123. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

124. California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice of his or her intention to quit in which case the employee is entitled to his or her wages at the time of quitting.

125. During the Class period, Defendant willfully failed to pay Plaintiff and class members who are no longer employed by Defendant all their earned wages, specifically, wages for all hours worked, including overtime, and meal and rest period premiums not paid for missed or interrupted meal and rest periods, either at the time of discharge or within seventy-two hours of their leaving Defendant's employ in violation of California Labor Code §§ 201, 202, and 203.

126. Plaintiffs and members of the Class are entitled to waiting time penalties for each day that has passed that they have not received all wages owed for up to 30 days.

## **SEVENTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE BUSINESS EXPENSES**  
**(Violation of Labor Code § 2802, *et seq.*)**  
**(Against all Defendants)**

127. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

128. California Labor Code § 2802 provides, in relevant part, that: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

129. At all relevant times herein, Defendant violated California Labor Code § 2802, by failing to indemnify and reimburse Plaintiffs and the Class Members for required expenses incurred in the discharge of their job duties for Defendant's benefit. Defendant's uniform policy, practice and procedure was to not reimburse Plaintiffs and the Class Members for personal cell phone usage for work purposes, mileage, ride-share fees or other expenses incurred for Defendant within the course and scope of their employment for Defendant. These expenses were necessary to complete their principal job duties. Defendant is estopped by Defendant's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by Plaintiffs and the Class Members, Defendant failed to indemnify and reimburse Plaintiffs and the Class Members for these expenses as an employer is required to do under the laws and regulations of California.

130. Plaintiffs therefore demand reimbursement for the above described expenditures or losses incurred by Plaintiffs and the Class Members in the discharge of their job duties for Defendant, or their obedience to the directions of Defendant, with interest at the statutory rate and attorneys' fees and costs as allowed under California Labor Code § 2802.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
**(Violation of California's Unfair Competition Law,  
Bus. & Prof. Code § 17200 *et seq.*)**  
**(Against all Defendants)**

131. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

132. California Business and Professions Code § 17200 (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

133. Through its action alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

1       134. Defendant's unlawful conduct under the UCL includes, but is not limited to, violating the  
2 statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not limited to, failure  
3 to pay class members wages and compensation they earned through labor provided (including minimum  
4 wages and overtime wages), failure to reimburse them for necessary incurred business expenses, failing  
5 to pay one additional hour of pay at the employee's regular rate of compensation for each workday that  
6 the meal or rest period was not provided, up to a total of two hours pay – one for any number of missed  
7 meal periods and one for any number of missed rest periods, and failing to otherwise compensate class  
8 members as alleged herein. Defendant's fraudulent conduct includes, but is not limited to, issuing wage  
9 statements containing false and/or misleading information about the time the class members worked, and  
10 the amount of wages or compensation due.

11       135. Plaintiffs have standing to assert this claim because they suffered injury in fact and have  
12 lost money as a result of Defendant's conduct.

13        136. Plaintiffs and the Class seek restitutionary disgorgement from Defendant of monies owed  
14 for all hours worked and for unpaid meal and rest period premiums.

137. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies  
138 specified here by suing on behalf of themselves and other similarly situated class members previously or  
139 presently working for Defendant in California. Plaintiffs' success in this action will enforce important  
140 rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the  
141 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs are appropriate pursuant to  
142 Code of Civil Procedure section 1021.5.

**NINTH CAUSE OF ACTION**  
**Violation of Private Attorney General Act  
California Labor Code, §§2698, *et. seq.*  
(Against all Defendants)**

21 | 138. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

25        139. Labor Code §§2698 and 2699 (the California Private Attorney General Act of 2004, or  
26 “PAGA”), expressly establish that any provision of the California Labor Code which provides for a civil  
27 penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or  
28 any of its departments, divisions, commissions, boards, agencies or employees for a violation of the

1 California Labor Code, may be recovered through a civil action brought by an aggrieved employee on  
 2 behalf of himself or herself, and other current or former employees.

3       140. Whenever the LWDA, or any of its departments, divisions, commissions, boards,  
 4 agencies or employees has discretion to assess a civil penalty, a fact-finder in a civil action is authorized  
 5 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

6       141. Plaintiffs are “aggrieved employees” as defined by Labor Code §2699, in being  
 7 employees of Defendant, and one or more of the Labor Code violations were committed against them.

8       142. Plaintiffs assert all of their claims in this Complaint against Defendant on behalf of  
 9 themselves and all other members of the Class and/or on behalf of all aggrieved employees, as well as  
 10 the general public, in their capacity as “private attorney general” and seek all statutory penalties  
 11 available under the Labor Code, for the aforementioned Labor Code violations.

12       143. By reason of the above and pursuant to Labor Code §2699, Plaintiffs, on behalf of  
 13 themselves and all other members of the Class and/or on behalf of all aggrieved employees, as well as  
 14 the general public, is entitled to payment of a penalty of \$100 per pay period for each employee for the  
 15 initial violation, and \$200 per pay period for each employee for each subsequent violation, plus interest.

16       144. In addition, Plaintiffs, on behalf of themselves, and all other members of the Class and/or  
 17 on behalf of all aggrieved employees, as well as the general public, seek and is entitled to have 75% of  
 18 all recovered penalties and interest allocated to the LWDA and 25% to Plaintiffs. Further, Plaintiffs are  
 19 entitled to seek and recover reasonable attorneys’ fees, expenses, and costs pursuant to Labor Code  
 20 §2699, and any other applicable statutes.

21       145. Plaintiffs have complied with the notice requirements of Labor Code §2699.3(a)(1) prior  
 22 to commencing this action. A copy of the letter sent to the California LWDA on October 17, 2018, via  
 23 certified mail, and copied to Defendant’s Agent for Service of Process in California on the same date,  
 24 via certified mail, in accordance with §2699.3(a)(1), is attached hereto, as **Exhibit A**, and by reference  
 25 incorporated herein.

26       146. As of today’s date, the LWDA has not responded to Plaintiffs’ notice.

27       147. Plaintiffs and the Class are also entitled to reasonable attorneys’ fees and costs, pursuant  
 28 to California Labor Code section 2699(g)(1).

///

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant as follows:

- A. An order that this action may proceed and be maintained as a class action;
  - B. For all straight-time and overtime wages owed to Plaintiffs and each Class member for all hours worked;
  - C. For one hour of wages due to Plaintiffs and each class member for each work period of more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
  - D. For one hour of wages due to Plaintiffs and each class member for each work period of more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten (10) minute rest period for each four (4) hours or major fraction thereof worked;
  - E. For actual damages or statutory penalties under Labor Code § 226(e);
  - F. For waiting time penalties pursuant to Labor Code § 203;
  - G. For liquidated damages pursuant to Labor Code § 1194.1;
  - H. For reimbursement of unpaid expenses under Labor Code § 2802;
  - I. For restitutionary disgorgement pursuant to the UCL;
  - J. Prejudgment interest at the maximum legal rate;
  - K. Reasonable attorney's fees;
  - L. General, special and consequential damages, to the extent allowed by law;
  - M. Costs of suit;
  - N. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;
  - O. For penalties and reasonable attorneys' fees and costs under Labor Code §2698, *et seq.*, and
  - P. Such other equitable relief as the Court may deem just and proper.

DATED: May 27, 2021

THE MARKHAM LAW FIRM

By: /s/ David R. Markham  
David R. Markham  
Maggie Realin  
Lisa Brevard

1                   **QUINTILONE & ASSOCIATES**

2                   Richard E. Quintilone II

3                   Jeffrey T. Green

4                   **UNITED EMPLOYEES LAW GROUP**

5                   Walter Haines

6                   Attorneys for Plaintiffs Harrison, Kaffishahsavar and

7                   Jaco

8                   **MARLIN & SALTZMAN LLP**

9                   Stanley D. Saltzman

10                  Tatiana G. Avakian

11                  Attorneys for Plaintiff Mendoza

12                  **DEMAND FOR JURY TRIAL**

13                  Plaintiff demands a trial by jury for himself and the Class members on all claims so triable.

14                  DATED: May 27, 2021

15                  **THE MARKHAM LAW FIRM**

16                  By: /s/ David R. Markham

17                  David R. Markham

18                  Maggie Realin

19                  Lisa Brevard

20                  **QUINTILONE & ASSOCIATES**

21                  Richard E. Quintilone II

22                  Jeffrey T. Green

23                  **UNITED EMPLOYEES LAW GROUP**

24                  Walter Haines

25                  Attorneys for Plaintiffs Harrison, Kaffishahsavar and

26                  Jaco

27                  **MARLIN & SALTZMAN LLP**

28                  Stanley D. Saltzman

                        Tatiana G. Avakian

                        Attorneys for Plaintiff Mendoza

# Exhibit A

## THE MARKHAM LAW FIRM

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• 750 B Street, Suite 1950 • San Diego, California 92101 •  
•Phone: (619) 399-3995• Fax: (619) 615-2067•  
•EMAIL: [CONTACT@MARKHAM-LAW.COM](mailto:CONTACT@MARKHAM-LAW.COM)

October 17, 2018

**Via Online Filing:**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, California 94612

Re: Wage/Hour Claims of Andrea Harrison (“Employee”), on behalf of herself and other aggrieved employees in California against Bank of America (“Bank of America” or “Employer”)

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3**

To: PAGA Administrator, California Labor and Workforce Development Agency (“LWDA”)

From: Andrea Harrison (“Employee”), on behalf of herself and other aggrieved employees in California, who was subjected to the wage and hour practices as set forth below

Pursuant to California Labor Code § 2699.3, this letter is intended to provide written notice of intent to file a representative civil action by an aggrieved employee pursuant to subdivisions (a) and (f) of California Labor Code § 2699. The aggrieved employee is Andrea Harrison. The provisions of the California Labor Code that have been violated, including the facts and theories to support the alleged violation, are set forth below. For a more detailed explanation, see **Attachment A**.

Ms. Harrison is a resident of the State of California. During the applicable time period, Ms. Harrison was employed in California by Bank of America as a Financial Center Client Service Representative, or Teller, (“Teller”) at Defendant’s financial center in Auburn, California.

Bank of America employs numerous employees in the State of California. During the relevant time period, the Employer utilized consistent policies and procedures regarding the Employee and others similarly situated, in violation of Labor Code §§ 201-203, 226(a), 226.7, 510. 512, 1194, 1197 and 1198, et seq. as follows:

First, Employer required Employee and other similarly situated Tellers to be at their work stations ready to take their customer at their scheduled shift start time. This requires Tellers to

bootup and log on to Employer's computers and then open and load multiple programs, before one of the programs starts Employee payroll clock. This process takes approximately 15 to 20 minutes each day before the Employee is clocked in to the Employer's timekeeping system. Further, Employer required Employee and other similarly situated Tellers to log out at the end of their shifts and close all of the programs and shut down the computers, which took another 15 to 20 minutes each day. As such, in violation of Labor Code §§ 510(a), 1194, 1197 and 1998 and the applicable Industrial Wage Orders, the Employer, by failing to pay the Employee and all others similarly situated for all hours worked, failed to pay all straight time, minimum wages, overtime and double-time wages due.

Second, Employer's policies and procedures caused Employee and other aggrieved employees to delay their meal breaks past the fifth hour after the start of the employee shift, in order to assist customers. If the customer transaction encroached upon Employee's scheduled meal time, Employee had to assist the customer and conclude the transaction before Employee was able to take a meal break. This caused Employee to miss or delay her meal breaks beyond the end of the fifth hour, in violation of Labor Code. Further, Employee was frequently interrupted during her meal break and required to return to work to assist customers, even though her meal break did not last the mandatory minimum 30 minutes. This violates Labor Code § 512(a), which provides that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of at least 30 minutes..." Employee and other aggrieved employees were not paid meal break premiums for those late meal periods, in violation of Labor Code § 226.7(c).

Further, often, Employee was not allowed to take her rest breaks as provided by Labor Code § 226.7 and the applicable Wage Order, because she was required to assist customers. This caused her to forego one or more of her rest breaks. Employee and other aggrieved employees were not paid rest break premiums for those non-complaint rest breaks, in violation of Labor Code § 226.7(c).

Further, California Labor Code § 226(a) provides that every employer is required to furnish each employee with accurate itemized statements in writing showing, in part, "gross wages earned," (Labor Code § 226(a)(1)), "net wages earned" (Labor Code § 226(a)(5)), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..." (Labor Code § 226(a)(9)). Here, because the Employer failed to pay for all regular and/or overtime hours worked at the appropriate straight time, overtime and/or double-time rate, and failed to pay meal and rest break premiums, improper paystubs were issued to Employee and other aggrieved employees, and the Employee alleges that the Employer has violated Labor Code § 226(a).

Further, Employer failed to pay all aggrieved employees, whose employment with Bank of America terminated within the applicable time period, all their earned wages, specifically meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Employer's employ, in violation of California Labor Code § 201, 202, and 203. To the extent allowed by law, Employee seeks wages as penalties pursuant to Labor Code § 558 and expressly preserves Employee's right to do so.

Ms. Harrison, as an aggrieved employee and on behalf of herself and all other current or former Bank of America employees, seeks all penalties or remedies as may be allowed under PAGA, and by this letter gives written notice of her PAGA claim pursuant to Labor Code § 2699.3. Please advise within sixty-five (60) calendar days of the postmark date of this Notice whether the LWDA intends to investigate the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this Notice that the LWDA intends to investigate these allegations, the aggrieved Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code § 2699. Any further claims are included in the enclosed Class Action Complaint.

Ms. Harrison is represented in this matter by The Markham Law Firm, Quintilone & Associates, and the United Employees Law Group.

Very truly yours,

THE MARKHAM LAW FIRM



David R. Markham  
Maggie K. Realin  
Michael J. Morphew

**cc: (via Certified Mail)**

Bank of America, National Association  
Legal Department  
150 North College Street, NC1-028-17-06  
Charlotte, NC 28255

CT Corporation System, Agent for Service of  
Process for Bank of America, National  
Association  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

# Attachment A

1 David R. Markham (SBN 071814)  
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3 Maggie Realin (SBN 263639)  
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16 22974 El Toro Road, Suite 100  
17 Lake Forest, CA 92630-4961  
18 Telephone No. (949) 458-9675  
19 Facsimile No. (949) 458-9679

20 Attorneys for Plaintiff on behalf of herself and all others similarly situated  
21 [Additional Counsel on Signature Page]

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **COUNTY OF SAN FRANCISCO**

24 ANDREA HARRISON, an individual, on  
25 behalf of herself and all others similarly  
situated

26 Plaintiff,

27 v.

28 BANK OF AMERICA, N.A., a business entity,  
form unknown; and DOES 1 through 10,  
inclusive,

29 Defendants.

30 CASE NO.

31 **CLASS ACTION COMPLAINT FOR:**

- 32 (1) **FAILURE TO PAY REGULAR AND**  
33 **MINIMUM WAGES;**  
34 (2) **FAILURE TO PAY OVERTIME**  
35 **COMPENSATION;**  
36 (3) **FAILURE TO PROVIDE MEAL**  
37 **PERIODS;**  
38 (4) **FAILURE TO PROVIDE REST**  
39 **PERIODS;**  
40 (5) **FAILURE TO FURNISH TIMELY**  
41 **AND ACCURATE WAGE**  
42 **STATEMENTS;**  
43 (6) **FAILURE TO PAY ALL WAGES**  
44 **DU<sup>E</sup> UPON TERMINATION;**  
45 (7) **VIOLATION OF CALIFORNIA'S**  
46 **UNFAIR COMPETITION LAW**  
47 **("UCL"), Bus. & Prof. Code § 17200**  
48 **et seq.**

49 **DEMAND FOR JURY TRIAL**

1 Plaintiff ANDREA HARRISON (“Plaintiff”), by and through her attorneys of record,  
 2 brings this Class Action Complaint against Defendant BANK OF AMERICA, N.A. (“Bank of  
 3 America” or “Defendant”), and respectfully alleges the following:

4 **NATURE OF THE ACTION**

5 1. This is a class action for wage and labor violations arising out of Defendant’s failure  
 6 to pay wages for all time worked and failure to provide timely and uninterrupted meal and rest  
 7 periods, and for derivative claims.

8 2. As more fully set forth below, Defendant failed to pay its employees straight and  
 9 overtime wages for time they worked loading programs before their shift and closing programs  
 10 after their shift; failed to provide timely and uninterrupted meal and rest periods to its California  
 11 non-exempt employees in violation of California Labor Code sections 512 and 226.7, and the  
 12 applicable Industrial Wage Order; failed to pay its employees one hour of pay at the regular rate of  
 13 compensation for each instance that Defendant failed to provide statutorily mandated rest periods  
 14 and timely off-duty meal periods; failed to furnish timely and accurate wage statements; failed to  
 15 pay all wages due upon termination; and, is in violation of California’s Unfair Competition Law  
 16 (“UCL”).

17 3. Plaintiff seeks to represent and prosecute claims against Defendant in class action  
 18 proceedings on behalf of all those similarly situated who are or were residents of the State of  
 19 California.

20 **JURISDICTION AND VENUE**

21 4. This Court has jurisdiction over this action because this is a civil action where the  
 22 matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the  
 23 Court. The acts and omissions complained of in this action took place in the State of California.  
 24 Venue is proper because upon information and belief, Defendant has a regional office in this  
 25 county, conducts substantial business in this county and maintains financial centers in California in  
 26 this county.

**PARTIES**

1           5. Plaintiff ANDREA HARRISON is a resident of Colfax, California. Plaintiff was  
 2 employed by Defendant at Defendant's branch in Auburn, California, from approximately 2006 to  
 3 approximately June 15, 2018, as a Financial Center Client Service Representative, or Teller  
 4 ("Teller").

5           6. At all times material herein, Defendant was a corporation registered to do business  
 6 in California, including but not limited to conducting business within the County of San Francisco,  
 7 with its corporate headquarters located in Charlotte, North Carolina. Defendant is in the Bank &  
 8 Financial Holding industry. On information and belief, Defendant performs consumer and  
 9 financial banking services, including operating financial centers. At all relevant times alleged  
 10 herein, Plaintiff is informed and believes that Defendant is authorized to and conducts business in  
 11 California, including but not necessarily limited to County of San Francisco. Defendant employed  
 12 Plaintiff at its Auburn, California, Financial Center, and employ/employed other Tellers throughout  
 13 California.

14           7. Plaintiff is currently unaware of the true names and capacities, whether individual,  
 15 corporate, associate, or otherwise, of the defendants sued herein under fictitious names Does 1  
 16 through 10, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff will  
 17 seek leave to amend this complaint to allege the true names and capacities of said fictitiously  
 18 named defendants when their true names and capacities have been ascertained. Plaintiff is informed  
 19 and believes and thereon alleges that each of the fictitiously named defendants is legally  
 20 responsible in some manner for the events and occurrences alleged herein, and for the damages  
 21 suffered by the Class.

22           8. Plaintiff is informed and believes and thereon alleges that all defendants, including  
 23 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,  
 24 partners and/or joint ventures and/or employees of all other defendants, and that all acts alleged  
 25 herein occurred within the course and scope of said agency, employment, partnership, and joint  
 26 venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,  
 27 consent, authorization and ratification of their co-defendants.

## FACTS

2       9. Between approximately 2006 and June 15, 2018, Plaintiff was employed by  
3 Defendant, as a non-exempt, hourly-paid Teller at Defendant's branch in Auburn, California.  
4 Plaintiff's duties included assisting Defendant's customers, sales of Defendant's products and  
5 services, and processing transactions like deposits and check cashing, among other duties. In order  
6 to perform her work duties and begin assisting customers at the start of her shift, Plaintiff needed to  
7 load certain programs such as Marlin and Defendant's Timekeeping program, among other  
8 programs. Starting up the computer and loading these programs took approximately 15 to 20  
9 minutes each day before the start of her shift. Plaintiff was unable to clock in until the scheduled  
10 start of her shift. When Plaintiff inquired of her supervisors about being paid for the time spent  
11 loading the programs, she was told that Bank of America does have control over the computer  
12 systems loading and does not pay for that time. Plaintiff was never paid for this time either straight-  
13 time or overtime wages.

14        10. Plaintiff and other class members were not paid for this time, even though: (1) no  
15 practical administrative difficulty of recording the additional time exists or existed for Defendant  
16 during the relevant time period; (2) it is or was feasible for Defendant to determine or estimate the  
17 average time it takes each employee to complete his or her pre-shift start-up sequence, as all class  
18 members at issue in this action needed the same computer programs/applications in order to  
19 perform their work duties. *See also Troester v. Starbucks Corp.*, (2018) 5 Cal.5th 829.

20       11. Further, at the end of her shift, Plaintiff was required to clock out. She was then  
21 required to close all the programs and shut down the computer. This process took another 15 to 20  
22 minutes each day and was unpaid.

23       12. Upon information and belief, the financial centers were constantly busy and short  
24 staffed. Often, Plaintiff was at the teller window with a customer when her scheduled meal period  
25 arrived. Plaintiff was told by supervisors to take her meal period while remaining at the teller  
26 window. Plaintiff was told by her supervisors to input her meal period at the end of the day, even  
27 though she did not receive one. When Plaintiff complained to her supervisors about working  
28 through her meal and rest breaks, she was told that it was what was needed due to the financial

1 center being short staffed and there was nothing that could be done.

2       13. Additionally, when Plaintiff took her meal period in the upstairs employee break  
 3 room, she was not allowed to take her full uninterrupted 30-minute meal period. Plaintiff's  
 4 supervisors would frequently come and get her because customers needed to be assisted. Plaintiff  
 5 was never paid a meal period premium for those late or interrupted meal periods.

6       14. Often, when Plaintiff's scheduled rest periods arrived, she was not allowed to take  
 7 her breaks, because the financial center was too busy and there was not enough staff to cover the  
 8 teller windows. Plaintiff was never paid a premium for those missed rest periods.

9       15. Upon information and belief, the above-mentioned unlawful employment practices  
 10 by Defendant was applied the same to all Tellers in all financial centers in the State of California.

11       16. Defendant's conduct, as alleged here, has caused Plaintiff and class members  
 12 damages including, but not limited to, loss of wages and compensation. Defendant is liable to  
 13 Plaintiff and the class for failing to pay meal and rest break premiums, failing to pay all straight-  
 14 time and overtime wages owed for each pay period, failing to provide timely and accurate wage  
 15 statements, failing to pay all wages due upon termination, and unfair competition.

16       17. Plaintiff is a member of, and seeks to be a representative for, the class of similarly  
 17 situated employees who all have been exposed to, have suffered, and/or were permitted to work  
 18 under Defendant's unlawful employment practices as alleged herein.

#### **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

18       18. Plaintiff brings this action on behalf of herself and on behalf of all others similarly  
 19 situated, and as a member of the Class she seeks to represent. The class period is from four years  
 20 prior to the filing of the Complaint in this action until the trial of this action ("class period.") The  
 21 Class is defined as:

22           *All current and former non-exempt employees of Defendant, employed in  
 23 California, who, during the time period commencing four years before this  
 24 complaint was filed, and until the present ("class period"), worked at any of  
 25 Defendant's banks as a Teller or a position with similar duties and/or job titles.*

26  
 27       19. Plaintiff further seeks to represent the following subclasses:

#### **The Meal Break Subclass**

1           “All current and former non-exempt employees of Defendant, employed in  
 2           California, who, during the time period commencing four years before this  
 3           complaint was filed, and until the present (“class period”), worked at any of  
 4           Defendant’s banks as a Teller or a position with similar duties and/or job titles, and  
 5           who worked at least one shift longer than five hours in a workday.”  
 6

7           **The Rest Break Subclass**  
 8

9           “All current and former non-exempt employees of Defendant, employed in  
 10          California, who, during the time period commencing four years before this  
 11          complaint was filed, and until the present (“class period”), worked at any of  
 12          Defendant’s banks as a Teller or a position with similar duties and/or job  
 13          titles, and who worked at least one shift longer than three and a half hour in  
 14          a workday.”  
 15

16           **The Regular Wage Subclass**  
 17

18           “All current and former non-exempt employees of Defendant, employed in  
 19          California, who, during the time period commencing four years before this  
 20          complaint was filed, and until the present (“class period”), worked at any of  
 21          Defendant’s banks as a Teller, or a position with similar duties and/or job  
 22          titles, and who worked at least one shift less than eight hours in a workday  
 23          and/or worked less than 40 hours during the workweek.”  
 24

25           **The Overtime Subclass:**  
 26

27           “All current and former non-exempt employees of Defendant, employed in  
 28          California, who, during the time period commencing four years before this  
 29          complaint was filed, and until the present (“class period”), worked at any of  
 30          Defendant’s banks as a Teller, or a position with similar duties and/or job  
 31          titles, and who worked at least one shift longer than eight hours in a workday  
 32          and/or worked more than 40 hours during the workweek.”  
 33

34           **The Itemized Wage Statement Subclass**  
 35

36           “All current and former non-exempt employees of Defendant, employed in  
 37          California, who, during the time period commencing four years before this  
 38          complaint was filed, and until the present (“class period”), worked at any of  
 39          Defendant’s banks as a Teller, or a position with similar duties and/or job  
 40          titles, and who have received at least one wage statement from Respondent.”  
 41

42           **The Waiting Time Penalties Subclass**  
 43

44           “All members of the Class, the Unpaid Wages Subclass, Overtime Subclass,  
 45          Meal Break Subclass, and the Rest Break Subclass who separated  
 46          employment with Defendant at any point during the past three (3) years prior  
 47          to the filing of this action.”  
 48

- 49           20. Plaintiff reserves the right to amend or otherwise alter the class definition, or to  
 50          propose or eliminate subclasses, in response to facts learned through discovery, legal arguments  
 51

1 advanced by Defendant or otherwise.

2       21. This action has been brought and may be properly maintained as a class action  
 3 pursuant to the provisions of Code of Civil Procedure § 382 ("§ 382") and other applicable law.

4       22. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so  
 5 numerous that their individual joinder is impracticable. Plaintiff estimates, on information and  
 6 belief, that there are several hundred or several thousand current and former non-exempt  
 7 employees of Defendant employed in financial centers in California during the class period. The  
 8 precise number of Class members and their addresses are known to Plaintiff or will be known to  
 9 Plaintiff through discovery. Class members may be notified of the pendency of this action by mail,  
 10 electronic mail, the Internet, or published notice.

11       23. **Existence of Predominance of Common Questions of Law and Fact:** Pursuant  
 12 to § 382, common questions of law and fact exist as to all members of the Class. These questions  
 13 predominate over any questions affecting only individual Class members. These common legal and  
 14 factual questions include:

- 15           a. Whether Defendant had a policy or practice of not paying for time spent loading  
 16 programs and closing programs;
- 17           b. Whether Defendant had a policy or practice of not paying meal or rest period premiums;
- 18           c. Whether Defendant violated Labor Code section 226.7 and/or section 512 and engaged  
 19 in a pattern or practice of failing to provide timely, off-duty thirty (30) minute meal  
 20 periods to Plaintiff and members of the class;
- 21           d. Whether Defendant engaged in a pattern or practice of impeding Plaintiff and the  
 22 members of the class from taking statutory off-duty thirty (30) minute meal periods on a  
 23 timely basis;
- 24           e. Whether Defendant engaged in a pattern or practice of failing to properly compensate  
 25 Plaintiff and the members of the class for missed, untimely or on-duty meal periods as  
 26 required by California law;
- 27           f. Whether Defendant violated the applicable California Industrial Welfare Commission  
 28 ("IWC") Order by failing to provide Plaintiff and the members of the class with timely

- 1 off-duty thirty (30) minute meal periods;
- 2 g. Whether Defendant engaged in unfair practices and violated California Business and  
3 Professions Code section 17200 by failing to provide Plaintiff and the members of the  
4 class with their statutory off-duty meal and rest periods on a timely basis;
- 5 h. Whether Defendant engaged in unfair practices and violated California Business and  
6 Professions Code section 17200 by failing to pay Plaintiff and the members of the class  
7 for all time worked;
- 8 i. Whether Defendant maintained accurate time records of off-duty thirty (30) minute meal  
9 breaks taken by Plaintiff and members of the class in accordance with the applicable  
10 IWC Wage Order;
- 11 j. Whether Defendant violated Labor Code section 226(a) by issuing inaccurate itemized  
12 wage statements to Plaintiff and members of the class that failed to include payments for  
13 missed, untimely, and/or on-duty meal periods among wages earned throughout the  
14 Class period;
- 15 k. Whether Defendant violated Labor Code section 226(a) by issuing inaccurate itemized  
16 wage statements to Plaintiff and members of the class that failed to include payment for  
17 all hours worked;
- 18 l. Whether Defendant violated Labor Code section 226(a) by issuing inaccurate itemized  
19 wage statements to Plaintiff and members of the class that failed to accurately state the  
20 total hours worked, to the detriment of Plaintiff and the class;
- 21 m. Whether Defendant failed to compensate, and therefore violated Labor Code section  
22 226.7 and the applicable Wage Order by failing to provide ten (10) minute,  
23 uninterrupted rest periods as contemplated by California law for work periods in  
24 excess of three and one-half (3 ½) hours;
- 25 n. Whether Defendant engaged in a pattern or practice of failing to properly compensate  
26 Plaintiff and the members of the class for failing to provide ten (10) minute,  
27 uninterrupted rest periods as contemplated by California law for work periods  
28 in excess of three and one-half (3 ½) hours;

- 1           o. Whether Defendant violated Labor Code section 1197 due to failure to compensate  
 2           Plaintiff and members of the class for those acts Defendant required Plaintiff and  
 3           members of the class to perform for the benefit of Defendant;  
 4           p. Whether Defendant violated Labor Code § 201-203 by failing to pay all wages due  
 5           upon termination to all Class members who were terminated or voluntarily quit; and  
 6           q. The nature and extent of class-wide injury and the measure of damages or restitution for  
 7           the injury.

8           24. **Typicality:** Plaintiff's claims are typical of the claims of the members of the class  
 9 she seeks to represent because Plaintiff, as a non-exempt employee of Defendant, was exposed and  
 10 subjected to the same unlawful business practices as other employees employed by Defendant  
 11 during the class period. Plaintiff and the members of the class she seeks to represent sustained the  
 12 same types of damages and losses.

13           25. **Adequacy:** Plaintiff is an adequate representative of the class she seeks to represent  
 14 because her interests do not conflict with the interests of the members of the class Plaintiff seeks to  
 15 represent. Plaintiff has retained counsel competent and experienced in complex class action  
 16 litigation and Plaintiff intends to prosecute this action vigorously. The interests of the members of  
 17 the class will be fairly and adequately protected by Plaintiff and her counsel.

18           26. **Superiority and Substantial Benefit:** The class action is superior to other  
 19 available means for the fair and efficient adjudication of Plaintiff's and the Class members' claims.  
 20 The damages suffered by each individual Class member may be limited. Damages of such  
 21 magnitude are small given the burden and expense of individual prosecution of the complex and  
 22 extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible  
 23 for the Class members to redress the wrongs done to them on an individual basis. Even if members  
 24 of the Class themselves could afford such individual litigation, the court system could not.  
 25 Individualized litigation increases the delay and expense to all parties and the court system due to  
 26 the complex legal and factual issues of the case. By contrast, the class action device presents far  
 27 fewer management difficulties and provides the benefits of single adjudication, economy of scale,  
 28 and comprehensive supervision by a single court.

27. The Class should also be certified because:

a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendant;

b. The prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Defendant has acted or refused to act on grounds generally applicable to the Class, and/or the general public, thereby making appropriate final and injunctive relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION**  
**FAILURE TO PAY REGULAR AND MINIMUM WAGES**  
(Violation of Labor Code § 1197, 1198, and IWC Wage Order No. 4-2001)  
(Against all defendants)

28. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

29. Labor Code section 1197 provides, “the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

30. Labor Code section 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

31. IWC Wage Order 4-2001 Section 4 provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

32. Pursuant to the IWC Wage Order, Defendant is required to pay Plaintiff, and the members of the Class, for all hours worked, meaning the time which an employee is subject to the control of the employer.

33. At all relevant times during the class period, Defendant failed to pay Plaintiff and other members of the class wages for all hours worked, in that Plaintiff and the class were required to boot up their computer and load several programs to begin their shifts, and they were not paid for this time. Similarly, after their shift ended, Plaintiff and the Class had to clock out from the time program, log off of all the programs, and shut down the computer. Plaintiff and the Class were not paid for this time.

34. In relevant part, Labor Code section 1194 provides that any employee receiving less than minimum wage applicable to the employee is entitled to recover in a civil action the unpaid balance of the amount of this minimum wage, including interest thereon, reasonable attorney's fees, and cost of suit, which Plaintiff and other members of the class seek.

35. Pursuant to Labor Code section 1194.2, liquidated damages are available to employees who file an action under Labor Code section 1194, which Plaintiff and members of the class seek.

36. In committing the violations of state law as herein alleged, Defendant has knowingly and willfully refused to perform their obligations to compensate Plaintiff and members of the class for all wages earned and all hours worked at least minimum wage. As a direct result, Plaintiff and other members of the class have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages and lost interest on such monies and expenses and attorney's fees in seeking to compel Defendant to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdiction of this Court.

37. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendant's minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, and liquidated damages to the fullest extent permissible pursuant to Labor Code sections 1194 and 1194.2.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME COMPENSATION**  
**(Violation of Labor Code § 510)**  
**(Against all defendants)**

1       38. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth  
 2 herein.

3       39. Labor Code §510 and the applicable Wage Order provide that employees in  
 4 California shall not be employed more than eight hours in any workday or forty hours in a  
 5 workweek unless they receive additional compensation beyond their regular wages in amounts  
 6 specified by law. Specifically, Labor Code §510(a) requires that:

7               Any work in excess of eight hours in one workday and any work in excess of 40  
 8 hours in any one workweek and the first eight hours worked on the seventh day  
 9 of work in any one workweek shall be compensated at the rate of no less than one  
 and one-half times the regular rate of pay for an employee. Any work in excess  
 of 12 hours in one day shall be compensated at the rate of no less than twice the  
 regular rate of pay for an employee.

10      40. Labor Code section 1194 establishes an employee's right to recover unpaid  
 11 overtime compensation, and interest thereon, together with the costs of suit, and attorneys' fees.  
 12 Labor Code section 1198 makes employment of an employee for longer hours than the IWC set or  
 13 under conditions the IWC prohibits is unlawful.

14      41. At all times relevant hereto, Plaintiff and other members of the class, have worked  
 15 more than eight hours in a workday, and/or more than forty hours in a workweek.

16      42. At all times relevant hereto, Defendant has failed to pay Plaintiff, and the other  
 17 members of the class, the overtime compensation premium for those unpaid hours they have  
 18 worked in excess of the maximum hours permissible by law as required by Labor Code sections  
 19 510 and 1198, and the applicable Wage Order.

20      43. By virtue of Defendant's unlawful failure to pay the lawful overtime rate of  
 21 compensation to the Plaintiff, and the other members of the class, Plaintiff and the other members  
 22 of the class, have suffered, and will continue to suffer, damages in amounts which are presently  
 23 unknown to them, but which exceed the jurisdictional limits of this Court and will be ascertained  
 24 according to proof at trial.

25      44. Defendant acted and is acting intentionally and oppressively toward Plaintiff, and  
 26 the other members of the class, with a conscious disregard of their rights, or the consequences to  
 27 them, with the intent of depriving them of property and legal rights and otherwise causing them

1 injury. Defendant failed to pay Plaintiff and other members of the class for all hours worked  
2 including the time spent loading programs before their shift, closing the programs after their shifts,  
3 and the time when the requirement to load necessary programs encroached on Plaintiff and other  
4 class members' meal breaks. To the extent this time worked exceeded eight hours in a day and/or  
5 forty hours in a week, Plaintiff and class members are entitled to overtime wages.

6       45. Plaintiff, and the other members of the class, request recovery of overtime  
7 compensation according to proof, interest, attorneys' fees, expenses, and costs pursuant to Labor  
8 Code §1194(a), and Civil Code §§3287(b) and 3289, as well as the assessment of any statutory  
9 penalties against Defendant, in a sum as provided by the Labor Code, the applicable Wage Order,  
10 and/or other statutes.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(Violation of Labor Code §§ 512, 226.7, and the applicable Wage Order)**  
**(Against all defendants)**

46. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

47. California Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission”.

48. IWC Order No. 4-2001(11)(A) provides, in pertinent part: “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

49. Section 512(a) of the California Labor Code provides, in pertinent part: “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal

period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

50. As alleged herein, Defendant failed to authorize and permit timely and uninterrupted meal periods during the Class period. Plaintiff and members of the class were routinely required to work without a timely and uninterrupted meal break at the direction of Defendant and/or with Defendant's knowledge and acquiescence.

51. By its actions in requiring its employees to work through meal periods and/or its failure to relieve the employees of their duties for their off-duty meal periods, Defendant has violated California Labor Code §§ 226.7, 512 and § 11 of IWC Wage Order No. 4-2001, and is liable to Plaintiff and the class.

52. As a result of the unlawful acts of Defendant, Plaintiff and the class have been deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code §§ 226.7(c), 512 and § 11 of IWC Wage Order No. 4-2001, in the amount of one additional hour of pay at the employee's regular rate of compensation for each workday in which Defendant failed to provide its employees with timely statutory off-duty meal periods.

53. Plaintiff, and the other members of the class, are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code sections 226.7 and 512.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**  
**(Violation of Labor Code §§ 226.7 and the applicable Wage Order)**  
**(Against all defendants)**

54. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

55. California Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable order of the Industrial Welfare Commission”.

56. IWC Order No. 4-2001(12)(A) provides, in pertinent part: “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the

1 middle of each work period. The authorized rest period time shall be based on the total hours  
 2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction  
 3 thereof. However, a rest period need not be authorized for employees whose total daily work time  
 4 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours  
 5 worked for which there shall be no deduction from wages".

6       57. IWC Order No. 4-2001(12)(B) further provides: "[i]f an employer fails to provide  
 7 an employee with a rest period in accordance with the applicable provisions of this order, the  
 8 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
 9 compensation for each workday that the rest period is not provided".

10      58. As alleged herein, Defendant failed to authorize and permit rest breaks during the  
 11 Class period. Plaintiff and members of the class were routinely required to work through rest  
 12 periods at the direction of Defendant and/or with Defendant's knowledge and acquiescence.

13      59. By its actions in requiring its employees during the class period to work through rest  
 14 periods and/or its failure to relieve the employees of their duties for their rest periods, Defendant  
 15 violated § 12 of IWC Wage Order No. 4-2001 and California Labor Code § 226.7 and is liable to  
 16 Plaintiff and the class.

17      60. Defendant's unlawful conduct alleged herein occurred in the course of employment  
 18 of Plaintiff and all others similarly situated and such conduct has continued through the filing of  
 19 this complaint.

20      61. As a direct and proximate result of Defendant's unlawful action, Plaintiff and the  
 21 class have been deprived of timely rest periods and/or were not paid for rest periods taken during  
 22 the Class period, and are entitled to recovery under Labor Code § 226.7(c) in the amount of one  
 23 additional hour of pay at the employee's regular rate of compensation for each workday in which  
 24 Defendant failed to provide employees with timely and/or paid rest periods.

25      62. Plaintiff, and the other members of the class, are entitled to seek and recover  
 26 reasonable attorneys' fees and costs pursuant to Labor Code sections 226.7.  
 27  
 28

**FIFTH CAUSE OF ACTION**

**FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS  
(Violation of Labor Code §226)  
(Against all defendants)**

63. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

64. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [...], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, [...], (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”.

65. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

66. Plaintiff is informed, believes and thereon alleges that at all times relevant, Defendant knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to furnish Plaintiff and each Class member with timely and accurate itemized statements showing the gross wages earned by each of them, as required by Labor Code § 226(a), in that the premiums owed to Plaintiff and the members of the Class for untimely or interrupted meal and rest periods were not included in gross wages earned by Plaintiff and the Class.

67. Further, wages owed to Plaintiff and members of the class for hours they worked

before their shift and after their shift, and the time worked through meal breaks, were not included in gross wages earned by Plaintiff and the Class.

68. Defendant's failure to provide Plaintiff and members of the Class with accurate itemized wage statements during the Class period has caused Plaintiff and members of the Class to incur economic damages in that they were not aware that they were owed and not paid compensation for missed rest periods and on-duty meal periods, and for all hours worked. In addition, Defendant provided inaccurate information regarding hours worked, which masked its underpayment of wages to Plaintiff and the Class.

69. As a result of Defendant's issuance of inaccurate itemized wage statements to Plaintiff and members of the Class in violation of Labor Code § 226(a), Plaintiff and the members of the Class are each entitled to recover penalties pursuant to § 226(e) of the Labor Code.

**SIXTH CAUSE OF ACTION**  
**FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**  
**(Violation of Labor Code §§ 201-203)**  
**(Against all defendants)**

70. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

71. California Labor Code §§ 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours prior notice of his or her intention to quit in which case the employee is entitled to his or her wages at the time of quitting.

72. During the Class period, Defendant willfully failed to pay Class members who are no longer employed by Defendant all their earned wages, specifically, meal and rest period premiums not paid for missed or interrupted meal and rest periods, and wages for all hours worked, including overtime, either at the time of discharge or within seventy-two hours of their leaving Defendant's employ in violation of California Labor Code sections 201, 202, and 203.

73. Therefore, Plaintiff and members of the Class are entitled to waiting time penalties

for each day that has passed that they have not received all wages owed to them, up to 30 days.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**  
**(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**  
**(Against all defendants)**

74. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

75. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

76. Through its action alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

77. Defendant's unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendant's unfair conduct under the UCL includes, but is not limited to, failure to pay Class members wages and compensation they earned through labor provided, and failing to otherwise compensate Class members as alleged herein. Defendant's fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time the Class members worked and the amount of wages or compensation due.

**DRAFT**

78. Plaintiff has standing to assert this claim because she has suffered injury in fact and has lost money as a result of Defendant's conduct.

79. Plaintiff and the Class seek restitutionary disgorgement from Defendant of monies owed for all hours worked and for unpaid meal and rest period premiums.

80. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified here by suing on behalf of themselves and other similarly situated Class members previously or presently working for Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

## PRAAYER

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment against Defendant as follows:

## **ON THE FIRST CAUSE OF ACTION**

1. For all straight-time and overtime wages owed to Plaintiff and each Class Member for all hours worked;
  2. For other compensatory damages and/or statutory damages and statutory penalties resulting from improper compensation according to proof;
  3. For statutory attorney fees according to proof;
  4. For statutory interest according to proof; and
  5. For reasonable attorneys' fees and costs pursuant to the California Labor Code.

## **ON THE SECOND CAUSE OF ACTION**

- DRAFT**

  1. For all overtime compensation owed to Plaintiff and each Class Member for all hours worked according to proof;
  2. For interest on any compensatory damages;
  3. For attorneys' fees, expenses, and costs pursuant to Labor Code §1194(a), and Civil Code §§3287(b) and 3289;
  4. For any statutory penalties against Defendant, in a sum as provided by the Labor Code, the applicable Wage Order, and/or other statutes.

## **ON THE THIRD CAUSE OF ACTION**

1. For one hour of wages due to Plaintiff and each Class member for each work period of more than five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
  2. For waiting time penalties according to proof;
  3. For statutory costs according to proof; and
  4. For statutory interest according to proof.

## **ON THE FOURTH CAUSE OF ACTION**

1. For one hour of wages due to Plaintiff and each Class member for each work period of

1 more than three and one-half (3 ½) hours when they did not receive an uninterrupted ten  
 2 (10) minute rest period for each four (4) hours or major fraction thereof worked;  
 3 2. For waiting penalties according to proof;  
 4 3. For statutory costs according to proof; and  
 5 4. For statutory interest according to proof.

## 6 **ON THE FIFTH CAUSE OF ACTION**

- 7 1. For statutory compensation for any harm caused;
- 8 2. For compensatory damages and interest thereon for actual harm caused; and
- 9 3. For statutory penalties under Labor Code § 226(e), interest and attorneys' fees and
- 10 costs.

## 11 **ON THE SIXTH CAUSE OF ACTION**

- 12 1. For statutory penalties, including thirty (30) days' wages at the correct hourly rate for
- 13 all wages not timely paid upon termination;
- 14 2. For penalty enhancement for willful conduct;
- 15 3. For statutory interest according to proof; and
- 16 4. For reasonable attorney's fees and costs pursuant to the Labor Code.

## 17 **ON THE SEVENTH CAUSE OF ACTION**

- 18 1. For the equitable, injunctive and declaratory relief;
- 19 2. For liquidated damages pursuant to Labor Code § 1194.1; and
- 20 3. For restitutionary disgorgement pursuant to the UCL.

## 21 **ON ALL CAUSES OF ACTION**

- 22 1. An order that this action may proceed and be maintained as a class action;
- 23 2. Reasonable attorney's fees;
- 24 3. General, special and consequential damages, to the extent allowed by law;
- 25 4. Costs of suit;
- 26 5. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;
- 27 6. Prejudgment interest at the maximum legal rate; and
- 28 7. Such other relief as the Court may deem just and proper.

DATED: October \_\_\_, 2018

**THE MARKHAM LAW FIRM**

By: \_\_\_\_\_

David R. Markham  
Maggie Realin  
Michael Morphew  
*Attorneys for Plaintiff and all others  
similarly situated*

DATED: October \_\_\_, 2018

**QUINTILONE & ASSOCIATES**

By: \_\_\_\_\_

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George A. Aloupas  
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Huntington Beach, CA 92649

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Facsimile: (562) 256-1006

**R A F T**

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for herself and the Class members on all claims so triable.

DATED: October \_\_\_, 2018

**THE MARKHAM LAW FIRM**

By: \_\_\_\_\_

David R. Markham  
Maggie Realin  
Michael Morphew  
*Attorneys for Plaintiff  
and all others similarly situated*

DATED: October \_\_\_, 2018

**QUINTILONE & ASSOCIATES**

By: \_\_\_\_\_

Richard E. Quintilone  
George A. Aloupas  
*Attorneys for Plaintiff  
and all others similarly situated*

# Exhibit B

# MARLIN & SALTZMAN

CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

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Stanley D. Saltzman  
Alan S. Lazar

William A. Baird  
Bradley R. Fagnani  
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Stephen P. O'Dell  
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March 22, 2019

## *Electronic Notice*

California Labor & Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, California 94612

Re: *Miguel Mendoza v. Bank of America Corporation*  
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

Please be advised that this office is counsel to Miguel Mendoza (“Mr. Mendoza”) and that all future communications should be directed to this office.

Notice is hereby provided as required by California Labor Code §2699.3, that Mr. Mendoza, on behalf of himself and all other similarly situated current and former aggrieved employees employed by Bank of America Corporation (hereinafter “Bank of America”),<sup>1</sup> alleges that Bank of America has violated, and continues to violate, the provisions of the Labor Code and Wage Orders promulgated by the Industrial Welfare Commission. Those similarly situated individuals are all persons who, since four years prior to the date of filing of the complaint, have been, or currently are, employed in California by Bank of America and classified as “non-exempt” operations managers.

The Complaint, which will be filed in the Contra Costa County Superior Court for the State of California, seeks redress against Bank of America for its systematic and continuous violations of the California Labor Code and Wage Order No. 4. Specifically, as more fully set forth in the copy of the Complaint, which is attached hereto and respectfully incorporated as though fully stated herein, Bank of America:

1. Violated Cal. Code Regs., tit. 8, § 11070, Labor Code §§ 226.7, 512, 558, 1194.5 by failing to provide legally-compliant meal periods, and failing to pay premium wages for missed, late, shortened, on duty, and on-the-premises meal and rest periods, pursuant to Labor Code §§ 226.7, 512, and the applicable IWC wage order, codified in Cal. Code Regs., tit. 8, § 11070. Violations include, and are not limited to: requiring employees to miss meal periods, take meal periods after the end of their fifth hour of work, and not allowing employees to take full 30 minute, off-duty, uninterrupted meal periods, and requiring meal and rest breaks be taken on the

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<sup>1</sup> Bank of America is a Delaware corporation, with its headquarters located at 150 N. College Street, NC1-028-17-06, Charlotte, NC 28255.

March 22, 2019

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premises; not paying for on duty meal periods and meal periods required to be taken on the premises; not paying for non-compliant meal and rest periods at the required premium rate of pay; and by failing to have a policy or practice that pays meal and rest period premium wages in compliance with California law.

2. Violated Labor Code §§ 226, 226.3, 226.4, 558, 1174, 1174.5 and 1194.5 by failing to provide itemized and accurate wage statements, including by failing to state the proper rates of pay, the amount of wages earned and paid, the hours worked, the rates of pay, and meal and rest period premiums.

3. Violated Cal. Code Regs., tit. 8, § 11070, Labor Code §§ 1174, 1174.5, and 1194.5 by failing to maintain accurate employment records for aggrieved employees.

4. Violated Labor Code §§ 200-203 by failing to pay aggrieved employees all compensation due within seventy-two hours of the employee's resignation or the employee's last day of work, whichever is later

Mr. Mendoza further alleges that Bank of America's misconduct is ongoing, and Bank of America is subject to civil penalties as provided by various provisions of the Labor Code, including Labor Code sections 226, 226.3, 226.7, and 512. We believe that Mr. Mendoza and other similarly situated Bank of America operations managers and former operations managers are entitled to all damages, restitution, statutory and civil penalties, and injunctive relief allowed by law.

Mr. Mendoza requests that the Labor and Workforce Development Agency not investigate these violations and permit Plaintiff to pursue claims for such penalties under the Private Attorney General's Act ("PAGA"), Labor Code section 2698, *et seq.* However, if it wishes to investigate this matter further, please notify this office. If no notice is provided within sixty-five (65) calendar days of the submission date of this letter, Mr. Mendoza will proceed to seek relief under PAGA in his lawsuit.

Thank you for your time and consideration.

Very truly yours,

**MARLIN & SALTZMAN, LLP**



Bradley R. Fagnani

cc: Bank of America Corporation  
150 N. College Street, NC1-028-17-06  
Charlotte, NC 28255  
(w/enclosure)

March 22, 2019

Page 3

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*Attorneys for Plaintiff and the putative Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

## COUNTY OF CONTRA COSTA

**MIGUEL MENDOZA**, individually, and on behalf of all others similarly situated,

Plaintiff.

V.

**BANK OF AMERICA CORPORATION, and  
DOES 1-100, inclusive,**

### Defendants.

CASE NO.:  
1

## **CLASS ACTION COMPLAINT FOR:**

1. Failure to Provide Compliant Meal Periods (Lab. Code §§ 512, 226.7, and Wage Order No. 4);
  2. Failure to Provide Compliant Rest Breaks (Lab. Code §§ 512, 226.7, and Wage Order No. 4);
  3. Failure to Accurately Itemize and Report Wages, Hours, and Pay Rates (Lab. Code §§ 226, 1174, and Wage Order No. 4);
  4. Failure to Pay All Wages Upon Discharge (Lab. Code §§ 200-203);
  5. Failure to Reimburse for Necessary Business Expenses (Lab. Code § 2802);
  6. Violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*); and
  7. Civil Penalties Under the Private Attorney General Act of 2004 (Lab. Code §§ 2698, *et seq.*)

## JURY TRIAL DEMANDED

1 Plaintiff Miguel Mendoza (“Plaintiff”), individually and on behalf of all others similarly  
 2 situated and similarly aggrieved, hereby brings this Class Action Complaint against Defendant  
 3 Bank of America Corporation (“Bank of America”) and DOES 1 through 100 (collectively,  
 4 “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this class action on behalf of himself and all others similarly  
 7 situated and similarly aggrieved employees (collectively, the “Class”), who have sustained  
 8 injuries arising out of Bank of America’s systematic course of uniform payroll policies and  
 9 practices that violate the California Labor Code, Industrial Welfare Commission (“IWC”) Wage  
 10 Order No. 4, California Code of Regulations, and California Business and Professions Code  
 11 section 17200. Specifically, Bank of America intentionally and wrongfully requires its operations  
 12 managers to remain on duty for meal and rest periods by requiring them to remain on the  
 13 premises, and often fails to provide its operations managers with an otherwise off duty,  
 14 uninterrupted, 30-minute meal period within the first five hours of their shifts, an uninterrupted  
 15 10-minute rest period for every four hours (or major fraction thereof) of work, and fails to pay  
 16 employees the resulting vested meal period and rest period premium wages when due.

17 2. Under California law, unless an employee is relieved of all duty during his or her  
 18 thirty-minute meal period, the meal period shall be considered an “on duty” meal period and  
 19 counted as hours worked which must be compensated at the employee’s regular rate of pay. (8  
 20 Cal. Code Regs. § 11040 [“Wage Order”], Part 11(A).) An “on duty” meal period shall be  
 21 permitted only when the nature of the work prevents an employee from being relieved of all duty  
 22 *and* when by written agreement between the employer and employee an on-the-job meal period  
 23 is agreed to. The written agreement must state that the employee may, in writing, revoke the  
 24 agreement at any time. (*Id.*) Here, Plaintiff and the Class were not relieved of all duty during their  
 25 meal periods and were, therefore, forced to remain “on duty.” Further, no on-the-job meal period  
 26 was agreed to in writing. Plaintiff and the Class were therefore entitled to be, but were not, paid  
 27 at their regular rate of pay for all “on duty” meal periods. Thus, Plaintiff and Class are due  
 28

premium wages.

3. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid as time worked because it is “on-duty.” This is true even where the employee is relieved of all work during the meal period. (*Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968.) Here, Plaintiff and the Class were required to remain at the office during their meal (and rest) periods, therefore, the meal periods should have been paid. Meal periods should have been, but were not paid. A compliant, timely meal period was not provided. Premium wages are, therefore, due.

4. Under California law, when employees are forced to miss a meal or rest period, take a late meal or rest period, take a shortened meal period lasting less than 30 minutes, take an interrupted meal or rest period, are required to take unpaid “on duty” meal periods, or are required to remain on the premises during meal periods without pay, they are immediately entitled to premium wages. Indeed, the California Supreme Court has held that an employee is entitled to the additional hour of pay *immediately* upon being forced to miss a rest or meal period, even in the absence of any request by employees or payment authorization by their supervisors. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1108.)

5. Bank of America's pattern, practice, and uniform administration of enterprise-wide policies and practices regarding illegal and improper compensation, as described herein, creates an entitlement to recovery by the Plaintiff and the putative Class for the unpaid balance of the full amount of unpaid and/or withheld compensation, including interest thereon, applicable penalties and premium pay, reasonable attorneys' fees, and costs of suit according to the mandates of the California Labor Code and California Code of Civil Procedure.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action under the California Constitution, Article VI, section 10, which grants the Superior Court, "Original jurisdiction in all causes except those given by statute to other courts." The statutes under which Plaintiff brings this action do not specify any other basis for jurisdiction.

7. Venue is proper in this judicial district under California Code of Civil Procedure sections 395(a) and 395.5 as a portion of the acts and injuries complained of herein occurred in this County and Bank of America employed Plaintiff in this County.

## **THE PARTIES**

8. Plaintiff is an individual and resident of the State of California, and at all relevant times was a non-exempt Bank of America Operations Manager in the State of California. At all times pertinent, Plaintiff's employment duties were discharged within the State of California.

9. Plaintiff was employed by Bank of America from September 2015 to January 2017 as an Operations Manager.

10. Bank of America is a Delaware corporation with hundreds of branch offices in California. On information and belief, Bank of America employs an Operations Manager at each and every branch office in California.

11. The true names and capacities whether individual, corporate, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff at this time. Plaintiff will amend this Complaint to show their true names and capacities once they are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants are responsible in some manner for the acts and occurrences set forth herein, and that the injuries and damages alleged herein were and are the direct and proximate result of the actions of these defendants. At all times herein mentioned, each Defendant participated in the doing of the acts alleged to have been done by the named Defendant, and furthermore, all Defendants were the agents, servants and employees of each of the other Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment. At all relevant times, Defendants were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12. The use of the term "Defendant" or "Defendants" in any of the allegations in this Complaint, unless specifically alleged otherwise, is intended to include and charge, both jointly

1 and severally, not only the Defendants identified in this Complaint, but also all Defendants  
 2 designated as DOES 1 through 100, inclusive, as though the term "Defendants" was followed in  
 3 each and every instance throughout this Complaint with the phrase "and each of them jointly and  
 4 severally," including all named Defendants and Defendants included herein and sued under the  
 5 fictitious names of DOES 1 through 100, inclusive.

#### FACTUAL ALLEGATIONS

7       13. At all relevant times, Bank of America classified Plaintiff and members of the Class  
 8 as "non-exempt" under IWC Wage Order No. 4 (the applicable Wage Order here), the California  
 9 Code of Regulations, and the California Labor Code.

10      14. During their employment, Plaintiff and members of the Class were often not  
 11 authorized or permitted by their supervisors to take an off duty, uninterrupted, full 30-minute  
 12 meal break within the first five hours of their shifts that exceeded five hours, as required by Labor  
 13 Code section 512 and IWC Wage Order No. 4.

14      15. During their employment, Plaintiff and members of the Class were often not  
 15 authorized or permitted by their supervisors to take an uninterrupted, full 10-minute rest break  
 16 per four hours worked or fraction thereof, as required by Labor Code section 512 and IWC Wage  
 17 Order No. 4.

18      16. During their employment, Plaintiff and members of the Class were often not  
 19 relieved of all duties during meal and rest breaks, as required by IWC Wage Order No. 4.

20      17. During their employment, Plaintiff and members of the class were required to  
 21 remain on the premises for meal breaks without a written agreement for on-the-job paid meal  
 22 periods.

23      18. Plaintiff's and members of the Class's missed, late, shortened, "on duty," and on-  
 24 the-premises meal and rest breaks were caused by pressure from supervisors and Bank of  
 25 America's required business practices, and were not voluntary.

26      19. Whenever Plaintiff's and members of the Class's meal or rest breaks are late,  
 27 missed, or shortened because of business concerns and thus not voluntary on the part of the  
 28

1 employee, Bank of America is required by statute and Wage Order No. 4 to pay the affected  
 2 employee a premium wage of one hour of additional pay at his or her hourly rate.

3       20. Whenever Plaintiff's and members of the Class's meal or rest breaks are "on duty"  
 4 or required to be on-the-premises, their breaks are on-the-clock and must be paid the time spent  
 5 by the Class Members during these non-complaint breaks, in addition to paying the affected  
 6 employee a premium wage of one hour of additional pay at his or her hourly rate, as required by  
 7 the Wage Order and the Labor Code.

8       21. Plaintiff's and members of the Class's right to meal and rest period premium wages  
 9 vested immediately upon the late, missed, or short meal or rest breaks.

10      22. Plaintiff's and members of the Class's right to meal and rest period premium wages  
 11 vested immediately upon the nonpayment for time worked for "on duty" or on-the-premises meal  
 12 or rest breaks.

13      23. During the class period, Bank of America: (1) failed to track and identify which  
 14 employee meal periods were late, missed, or short; (2) failed to maintain records of whether the  
 15 missed, late, or short meal period was due to the press of business or voluntary; (3) failed to pay  
 16 employees' "on duty" or on-the-premises meal or rest breaks; and (4) failed to pay premium  
 17 wages when required by law.

18      24. As a result, Plaintiff and members of the Class were not paid meal and rest period  
 19 premium wages for late, missed, short, "on duty," or on-the-premises meal or rest breaks, in  
 20 violation of California law.

21      25. Bank of America's wholesale failure to comply—or even have a system for  
 22 complying—with California's meal and rest break laws provided it with a competitive advantage  
 23 over companies that complied with California law.

24      26. Additionally, Bank of America could have easily implemented a system for  
 25 automatically paying meal and rest period premiums but chose not to do so. For example, Bank  
 26 of America could have simply paid operations managers premium wages for their meal breaks as  
 27 all were "on duty" or on-premises, and simply paid the meal breaks as time worked. Further,  
 28

1 Bank of America could instruct operations managers to notify their supervisors when they  
 2 received interrupted, short, or late meal or rest breaks. Moreover, on information and belief,  
 3 software exists where Bank of America can track when breaks are improper, record the reasons  
 4 therefor, and pay additional premium pay to affected employees. These systems also record those  
 5 premiums on wage statements.

6       27. Because Bank of America failed to implement a system for tracking meal and rest  
 7 break violations and recording whether they were voluntary, a presumption arises that the break  
 8 violations were involuntary and Bank of America owes the premium pay therefor. (*Safeway, Inc.*  
 9 *v. Superior Court of Los Angeles County* (2015) 238 Cal.App.4th 1138, 1159-1160.)

10      28. Bank of America's policies, practices, and other conduct described herein violated  
 11 the Labor Code, Wage Order No. 4 (9 Cal. Code Regs., § 11040), and Business & Professions  
 12 Code sections 17200, et seq.

### CLASS ALLEGATIONS

14      29. Plaintiff brings this class action under the provisions of California Code of Civil  
 15 Procedure section 382 on behalf of herself and the proposed Class defined as follows:

16       All of Bank of America's non-exempt California operations managers who worked a  
 17 shift over five hours in length beginning four years from the date of the filing of this  
 18 Complaint to the time judgment is entered hereon, and who were not provided with an  
 19 off duty, uninterrupted, 30 minute meal break that started before the beginning of their  
 20 sixth hour of work, or were required to remain on the premises during their meal breaks,  
 21 or were not provided off duty rest periods of at least 10 minutes for every four hours of  
 22 work or major fraction thereof.

23      30. This case is appropriate for class treatment because Plaintiff can prove the elements  
 24 of his claims on a class-wide basis using the same evidence as would be used to prove those  
 25 elements in individual actions alleging the same claims.

26      31. **Numerosity and Ascertainability:** The members of the Class are so numerous that  
 27 joinder of all members would be unfeasible and not practicable. The membership of the Class is  
 28

1 unknown to Plaintiff at this time; however, it is estimated that the Class number greater than one  
2 thousand individuals. The identity of such membership is readily ascertainable via inspection of  
3 Defendants' books and records or other approved methods. Similarly, Class members may be  
4 notified of the pendency of this action my mail, email, internet postings, and/or publication.

5       **32. Common Questions of Law or Fact:** There are common questions of law and fact  
6 as to Plaintiff and all other similarly situated persons, which predominate over questions affecting  
7 only individual Class members, including, without limitation:

- 8           a) Whether Bank of America required Plaintiff and members of the Class to remain  
9              on site during meal and rest breaks;
- 10          b) Whether Bank of America failed to relieve Plaintiff and members of the Class of  
11             all duty during meal and rest breaks;
- 12          c) Whether Bank of America required Plaintiff and members of the Class to miss meal  
13             periods, begin meal periods after the beginning of their sixth hour of work, or take  
14             meal periods less than 30 minutes long;
- 15          d) Whether Bank of America and Plaintiff and members of the Class agreed in writing  
16             to "on duty" meal and rest periods;
- 17          e) Whether Bank of America had a policy which unlawfully failed to monitor and  
18             categorize missing, late, or short meal and/or rest periods;
- 19          f) Whether Bank of America's failure to record the reasons for missed, short, or late  
20             meal and/or periods creates a presumption that all such periods were missed, short,  
21             or late involuntarily;
- 22          g) Whether Bank of America had a policy or practice of not automatically paying  
23             Plaintiff and members of the Class required meal and rest period premium wages  
24             for involuntarily missed, short, and/or late meal or rest periods;
- 25          h) Whether Bank of America's failure to have a policy or practice for automatically  
26             paying the Class members required meal and rest period premium wages for non-

complaint meal or rest periods violated the California Labor Code and applicable Wage Order;

- i) Whether Plaintiff and the Class members were damaged by Bank of America's conduct;
  - j) Whether Bank of America's actions or inactions violated the statutes invoked herein;
  - k) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining Bank of America's conduct; and
  - l) Whether restitutionary disgorgement of the value to Bank of America non-complaint meal and/or rest periods is appropriate under Business & Professions Code section 17203.

**33. Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class because all members of the Class were subject to the identical policies and practices. The common questions of law set forth above are numerous and substantial and stem from Defendants' practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each individual Class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

34. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, Plaintiff and all Class members were comparably injured through Bank of America's misconduct described above. As alleged herein, Bank of America subjected all of the members of the class to similar violations of the California Industrial Welfare Commission Wage Orders (California Code of Regulations), the California Labor Code, and California Business and Professions Code section 17200, which prohibits unlawful and/or unfair business practices.

35. **Adequacy of Representation:** Plaintiff is an adequate class representative because he is fully prepared to take all necessary steps to represent fairly and adequately the interests of

1 the members of the Class, and because his interests do not conflict with the interests of other  
 2 Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing and able  
 3 to fully and adequately represent Plaintiff and the members of the Class. Plaintiff's attorneys are  
 4 experienced in complex class action litigation, and they will prosecute this action vigorously.  
 5 Plaintiff and his counsel, who are experienced class action lawyers, will fairly and adequately  
 6 protect the Class members' interests.

7       **36. Superiority:** The nature of this action and the laws available to Plaintiff and  
 8 members of the Class make the class action format a particularly efficient and appropriate  
 9 procedure to redress the violations alleged herein. If each Class member were required to file an  
 10 individual lawsuit, Bank of America would necessarily gain an unconscionable advantage since  
 11 it would be able to exploit and overwhelm the limited resources of each individual plaintiff with  
 12 its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by  
 13 the individual Class members, even if possible, would create a substantial risk of inconsistent or  
 14 varying verdicts or adjudications with respect to the individual Class members against Bank of  
 15 America, and which would establish potentially incompatible standards of conduct for Bank of  
 16 America and/or legal determinations with respect to individual Class members which would, as  
 17 a practical matter, be dispositive of the interests of the other Class members not parties to  
 18 adjudications or which would substantially impair or impede the ability of the Class members to  
 19 protect their interests. Further, the claims of the individual members of the Class are not  
 20 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant  
 21 costs and expenses attending thereto.

22       37. A community of interest also exists in ensuring that the relief granted is sufficient  
 23 to adequately compensate the members of the Class.

24       38. A practice or policy of not paying meal and rest period premiums presents an issue  
 25 "suitable for class treatment." (*Safeway, supra*, 238 Cal.App.4th at 1159.)

26       ///

27       ///

28

## **FIRST CAUSE OF ACTION**

## **Failure to Provide Compliant Meal Breaks**

[Cal. Lab. Code §§ 226.7 and 512; IWC Wage Order No. 4 § 11]

39. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

40. California Labor Code section 512(a) sets forth the relevant meal period requirement, as follows: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...."

41. California Labor Code section 226.7 provides for a remedy for non-complaint meal periods as follows:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

42. The Wage Order likewise sets forth the meal period requirements and penalties above for workers, as follows:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes... Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. Unless the employee is relieved of all duty during a 30 minute

1 meal period, the meal period shall be considered an “on duty” meal period and counted  
 2 as time worked. An “on duty” meal period shall be permitted only when the nature of the  
 3 work prevents an employee from being relieved of all duty and when by written  
 4 agreement between the parties an on-the-job meal period is agreed to. The written  
 5 agreement shall state that the employee may, in writing, revoke the agreement at any  
 6 time...

7 ...

8 (D) If an employer fails to provide an employee a meal period in accordance with the  
 9 applicable provisions of this order, the employer shall pay the employee one (1) hour of  
 10 pay at the employee's regular rate of compensation for each workday that the meal period  
 11 is not provided.

12 43. “An employer's duty with respect to meal breaks under both section 512,  
 13 subdivision (a) and [the] Wage Order...is an obligation to provide a meal period to its employees.  
 14 The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control  
 15 over their activities and permits them a reasonable opportunity to take an uninterrupted  
 16 30-minute break, and does not impede or discourage them from doing so.” (*Brinker Rest. Corp.*  
 17 v. *Superior Court* (2012) 53 Cal.4th 1004, 1040.)

18 44. Based on all allegations set forth in paragraphs 13-28, Defendants' meal break  
 19 policies are entirely inadequate and fail to comply with California law.

20 45. Pursuant to Labor Code § 226.7(b) and IWC Wage Order No. 4, Plaintiff and each  
 21 member of the putative Class is entitled to recover from Defendants premium pay equal to the  
 22 sum of one hour of pay at their regular rate for each non-compliant meal period, and in addition  
 23 they must be paid for all time spent during these non-compliant and unpaid breaks.

24 **SECOND CAUSE OF ACTION**

25 **Failure to Provide Compliant Rest Breaks**

26 **[Cal. Lab. Code §§ 226.7 and 512; IWC Wage Order No. 4 § 12]**

27 46. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as

1 though set forth in full.

2       47. The Wage Order sets forth the rest period requirements and penalties above for  
 3 workers in professional, technical, clerical, mechanical and similar occupations, as follows:

4           (A) Every employer shall authorize and permit all employees to take rest periods, which  
 5 insofar as practicable shall be in the middle of each work period. The authorized rest  
 6 period time shall be based on the total hours worked daily at the rate of ten (10) minutes  
 7 net rest time per four (4) hours or major fraction thereof.....

8           ...

9           (B) If an employer fails to provide an employee a rest period in accordance with the  
 10 applicable provisions of this order, the employer shall pay the employee one (1) hour of  
 11 pay at the employee's regular rate of compensation for each workday that the rest period is  
 12 not provided.

13       48. California Labor Code section 226.7 provides for a remedy for non-compliant rest  
 14 periods as follows:

15           (a) No employer shall require any employee to work during any meal or rest period  
 16 mandated by an applicable order of the Industrial Welfare Commission.

17           (b) If an employer fails to provide an employee a meal period or rest period in accordance  
 18 with an applicable order of the Industrial Welfare Commission, the employer shall pay the  
 19 employee one additional hour of pay at the employee's regular rate of compensation for  
 20 each work day that the meal or rest period is not provided.

21       49. Based on all allegations set forth in paragraphs 13-28, Defendants' rest break  
 22 policies are entirely inadequate and fail to comply with California law.

23       50. Pursuant to Labor Code § 226.7(b) and IWC Wage Order No. 4, Plaintiff and each  
 24 member of the putative Class is entitled to recover from Defendants the sum of one hour of pay  
 25 at their regular rate for each noncompliant rest period.

26       ///

27       ///

28

### **THIRD CAUSE OF ACTION**

## **Failure to Accurately Report Itemized Time and Wages**

## **[Labor Code § 226, 1174; IWC Wage Order No. 4 § 7]**

51. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

52. Labor Code § 226 and Wage Order No. 4 require Defendants to provide to Plaintiff and the members of the Class, at the time of the payment of wages, “an accurate itemized statement” in writing that states, *inter alia*, all wages earned, all applicable pay rates, and all hours worked.

53. Labor Code § 1174 requires Defendants to keep records payroll records showing the hours worked daily by and the wages paid to employees. Labor Code 1174.5 provides that “[a]ny person employing labor who willfully fails to maintain the records required by subdivision ... accurate and complete records required by subdivision (d) of Section 1174... shall be subject to a civil penalty of five hundred dollars (\$500).”

54. The wage statements presented to Plaintiff and the Class members were and are not correct or accurate in that they failed to account for all time worked, including premium wages for missed, interrupted, late, "on duty," and on-the-premises meal and/or rest breaks.

55. As a result of these violations, Plaintiff and the members of the Class suffered actual injury, insofar as they were completely dependent on Defendants to capture and report hours worked, calculate proper rates of pay, and identify and categorize “on duty,” missed, late, and short meal breaks. Defendants’ failure to accurately report these items resulted in the employees not receiving all compensation owed to them, in violation of California law, as set forth herein.

56. As a result of the above, Plaintiff and members of the Class are entitled to the statutory penalty set forth in subdivision (e) of section 226, to the civil penalty set forth in section 226.3, an injunction against Defendants, under subdivision (h), and the civil penalties imposed by section 1174.5, as well as an award of costs and reasonable attorney's fees.

## **FOURTH CAUSE OF ACTION**

## **Failure to Pay All Wages Due Upon Discharge**

## [Labor Code § 203]

57. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

58. California law requires that employees whose employment is terminated be paid all wages earned and unpaid, at the time of the worker's separation from the employer. Plaintiff recently separated from Defendants and was not paid all earned and unpaid wages at the time of his termination of employment, including unpaid minimum wages, unpaid overtime, unpaid reporting time wages, and unpaid premiums for missed meal and rest breaks.

59. At all times pertinent hereto, Defendants had it within their abilities to capture all time worked and consult their business records and properly calculate and pay all of the said unpaid wages, at the time of Plaintiff's employment ended. However, Defendants, and each of them, willfully and intentionally failed and refused to pay the earned and unpaid wages to Plaintiff. Plaintiff alleges, on information and belief, that Defendants have similarly treated the other employees whose employment with Defendants has terminated within the three years prior to the filing of this complaint.

60. Plaintiff did not hide himself, or in any manner refuse or obfuscate any attempt by Defendants to tender the balance of the earned and unpaid wages. Plaintiff alleges, on information and belief, that the same is true of the other employees whose employment with Defendants has terminated within the three years prior to the filing of this complaint.

61. Pursuant to California law, Plaintiff and the other Class Members whose employment has terminated within the last three years, are entitled to a penalty equal to their regular daily rate, up to a maximum of 30 days.

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111

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## **FIFTH CAUSE OF ACTION**

### **Failure to Reimburse for Business Expenses**

[Cal. Lab. Code § 2802]

62. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

63. Under California Labor Code § 2802, employees are entitled to be indemnified “for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties.”

64. Bank of America has failed to reimburse Plaintiff and members of the Class for their ordinary business expenses that were incurred on behalf of and for the benefit of Bank of America including but not limited to cell phones and other expenses to be determined in discovery.

65. Plaintiff and members of the Class are, therefore, entitled to be indemnified, pursuant to Labor Code § 2802(b), with interest at the statutory rate, plus attorneys' fees, penalties, and costs.

## **SIXTH CAUSE OF ACTION**

## **Unfair Competition**

**[Business & Professions Code § 17200, *et. seq.*]**

66. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though set forth in full.

67. Defendants' failure to provide lawful meal breaks, authorize and provide lawful rest breaks, and/or failure to pay vested meal and rest period premium wages constitutes an unlawful and unfair business practice under Bus. & Prof. Code § 17200, et seq., as it violates the provisions of the Labor Code and Wage Order No. 4 as described above.

68. Defendants' conduct described herein is "unfair" under Bus. & Prof. Code § 17200 because it is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious, and any utility of such practices is outweighed by the harm caused to the Plaintiff, the

1 Class, and the public.

2 69. Defendants' employment practices were also unfair because they undermine  
3 California's wage and hour laws, which reflect the strong public policy favoring protection of  
4 workers' general welfare and society's interest in a stable job market.

5 70. The gravity of harm Defendants' employment practices places on its employees  
6 substantially outweighs any utility, reasons, justifications, and motives Defendants can provide  
7 for these practices.

8 71. Defendants' wrongful conduct is ongoing and part of a pattern or generalized  
9 course of conduct repeated on thousands of occasions yearly.

10 72. By and through their unfair and unlawful business practices described herein,  
11 Defendants have obtained valuable property, money, and services from Plaintiff, members of the  
12 Class, and the general public, and have deprived them of valuable rights and benefits guaranteed  
13 by law, all to their detriment.

14 73. Plaintiff seeks order requiring Defendants to make full restitution and to disgorge  
15 their ill-gotten gains wrongfully obtained from members of the Class as permitted by Bus. &  
16 Prof. Code § 17203.

17 74. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction on behalf of  
18 the general public enjoining Defendants from continuing to engage in the unfair competition  
19 described above, or any other act prohibited by law.

20 75. Additionally, Plaintiff and the Class members seek an order requiring Defendants  
21 to pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

### 23 SEVENTH CAUSE OF ACTION

#### 24 Civil Penalties Under the Private Attorney General Act of 2004

25 [Labor Code §§ 2698, *et seq.*]

26 76. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as  
though set forth in full.

27 77. Under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code

§§ 2698, et seq., any employee aggrieved by an employer's violation of the Labor Code has the right to file an action on behalf of all aggrieved employees for the civil penalties established by § 2699 and/or other Labor Code sections.

78. Plaintiff is an employee who has been aggrieved by Defendants' violations of the aforementioned Labor Code provisions, and brings this cause of action on behalf of himself and as a representative of other similarly aggrieved employees who were subject to Defendants' wrongful conduct described above.

79. The aforementioned wrongful acts and omissions of Defendants were violations of the Labor Code, as set forth herein.

80. During the relevant time period, Defendants engaged in each of the wrongful acts and/or omissions detailed above. As a result, Plaintiff and Class Members are entitled to one hundred dollars (\$100) for each initial Labor Code violation and two hundred dollars (\$200) for each subsequent violation, and/or any and all other penalties permitted by PAGA. Labor Code § 2699(f)(2).

81. On March 22, 2019, Plaintiff provided timely written notice to the Labor and Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699.3. If the LWDA refuses to investigate the above claims, Plaintiff will seek leave to amend the Complaint to claim penalties under PAGA.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, and for an Order follows:

- a) certifying the proposed Class defined herein;
  - b) appointing Plaintiff as Class Representative;
  - c) appointing Plaintiff's counsel as Class Counsel;
  - d) declaring Defendants' conduct to be unlawful;
  - e) awarding compensatory damages in an amount according to proof with interest thereon

- 1 f) On the First Cause of Action, for damages and/or penalties, as provided by law, in
- 2 an amount according to proof at the time of trial;
- 3 g) On the Second Cause of Action, for damages and/or penalties, as provided by law,
- 4 in an amount according to proof at the time of trial;
- 5 h) On the Third Cause of Action, for damages and/or penalties, as provided by law,
- 6 in an amount according to proof at the time of trial;
- 7 i) On the Fourth Cause of Action, for all earned wages due and owing at the time of
- 8 separation from Defendants, plus waiting time penalties, pursuant to Labor Code
- 9 § 203, according to proof at the time of trial;
- 10 j) On the Fifth Cause of Action for reimbursement of all necessary business expenses
- 11 advanced by Plaintiff and the Class members, in an amount according to proof at
- 12 the time of trial;
- 13 k) On the Sixth Cause of Action, for restitution to Plaintiff and other similarly situated
- 14 members of the general public of all funds unlawfully acquired by Defendants by
- 15 means of any acts or practices declared by the Court to be in violation of Bus. &
- 16 Prof. Code §§ 17200 *et seq.*, for an injunction to prohibit Defendants from engaging
- 17 in the unfair business practices complained of herein, for an injunction requiring
- 18 Defendants to give notice, to persons to whom restitution is owing, of the means
- 19 by which to file and make claim for restitution;
- 20 l) On the Seventh Cause of Action, for penalties pursuant to Labor Code §§ 2698-
- 21 2699;
- 22 m) awarding penalties and all available relief pursuant to the Labor Code and Wage
- 23 Order No. 4;
- 24 n) preliminarily and permanently enjoining Defendants from engaging in the unlawful
- 25 and unfair practices alleged herein;
- 26 o) awarding attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 226.7,
- 27 2802, and Code of Civil Procedure § 1021.5; and

1 p) granting such other and further relief as this Court deems just and proper.  
2

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby request a trial by jury for all matters so triable in this action.  
5

6 Dated: March 22, 2019

**MARLIN & SALTZMAN, LLP**

7 By: \_\_\_\_\_  
8

9 Bradley R. Fagnani, Esq.  
10 Stanley D. Saltzman, Esq.

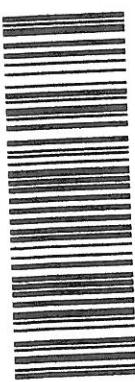
11 Attorneys for Plaintiffs and the Class  
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Certified Mail Fee \$ 3.50	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ 2.80
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage \$ 1.60	
Total Postage and Fees \$ 7.90	
Sent To: Bank of America Corp. Street and Apt. No., or P.O. Box No. 150 N College St, NC 1-028-17-06 City, State, Zip+4 Charlotte NC 28255	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

3/22/19

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MAILED FROM ZIP CODE 91301

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A. Signature	B. Received by Printed Name	C. Date of Delivery
<input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.	<input type="checkbox"/> Addressee	<input type="checkbox"/> or on the front if space permits.
1. Article Addressed to:		
150 N. College St., NC 2828-17-06 Bank of America Corporation		
9590 9402 2498 6306 4659 73		
2. Article Number (Transfer from service label)		
7015 3010 0002 2163 1969		
PS Form 3811, July 2015 PSN 7530-02-9053		
<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>Charlotte NC 28255</p>		
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Delivery <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Member Benefits <input type="checkbox"/> Collected on Delivery Restricted Delivery <input type="checkbox"/> Premium Return Receipt for Delivery <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Restricted Delivery</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Insured Mail <input type="checkbox"/> Restricted Delivery <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Restricted Delivery</p>		
<p>4. CLASS ACTIONS, MASS TORTS &amp; CATASTROPHIC INJURIES</p> <p>AGOURA HILLS BUSINESS CENTER 29800 AGOURA RD, SUITE 210 AGOURA HILLS, CA 91301</p>		

**FROM: MARLIN & SALTZMAN**

CLASS ACTIONS, MASS TORTS &amp; CATASTROPHIC INJURIES

AGOURA HILLS BUSINESS CENTER  
29800 AGOURA RD, SUITE 210  
AGOURA HILLS, CA 91301**TO:**Bank of America Corporation  
150 N. College Street, NC1-028-17-06  
Charlotte, NC 28255

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>																	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Complete items 1, 2, and 3.</li> <li><input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.</li> <li><input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  <input checked="" type="checkbox"/> <i>Lawson Little</i> <input type="checkbox"/> Agent  <input type="checkbox"/> <i>Lawson Little</i> <input type="checkbox"/> Addressee</p> <p>B. Received by Printed Name <input type="checkbox"/> C. Date of Delivery  <i>Lawson Little</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>1. Article Addressed to:</p> <p><i>Bank of America Corporation  150 N. College St., NC1-028-17-06  Charlotte NC 28255</i></p> <p>  9590 9402 2498 6306 4659 73</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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PS Form 3811, July 2015 PSN 7530-02-000-9053

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on May 27, 2021, I electronically transmitted the foregoing document  
3 to the Clerk's Office using the CM/ECF System for filing and service via transmittal of a Notice  
4 of Electronic Filing.

5                   I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct.

7                   Executed on May 27, 2021 at San Diego, California.

8                   \_\_\_\_\_  
9                   /s/ *Leeanna Carcione*  
10                   Leeanna Carcione

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